FAILURE TO PASS ALL SURFACE DRAINAGE THROUGH A SILTATION STRUCTURE

A. History of Previous Violations

Refer to Chapter 4 for the formula to determine history points.

B. Seriousness

Probability of Occurrence. The events for failure-to-pass violations normally include water pollution, sedimentation of streams, and fish kills. If any of these events has occurred, the maximum points (15) shall be assigned. The assessor should examine the report and associated materials carefully for water samples that show that the drainage did not meet effluent limits and did impact the receiving stream. At times, this violation may be cited when drainage is not escaping the permit during the inspection and no water samples were taken. In this case, evidence such as sediment deltas in streams, erosion off the permit, or sediment deposits (mud) on public highways or adjoining properties must be evaluated to determine the likelihood of the event's occurrence. Should it be determined that none of the events has occurred, the assessor must examine factors that may cause the event to occur. The proximity of adjacent properties and streams, topography, presence of a vegetative cover, and climatic conditions of the season in the region may have a bearing on the likelihood of occurrence of the event. For example, a siltation collection ditch without a vegetated barrier between the ditch and the permit boundary that has breached during the spring season when heavy rains are likely may cause the event and should be assigned in the 10-14 point range. Conversely, the same ditch in an arid region during the summer months far removed from the permit boundary may have no chance of causing the events to occur and could be assigned in the insignificant range of 1-4 points or even at 0 points for no probability of occurrence. A steep slope between the ditch and permit boundary may be likely to cause sedimentation while a more gentle slope or flat slope would be unlikely to cause the event; 5-9 points should be assigned in the latter case.

Extent of Damage. The first question to be answered is whether the impact the violated standard is designed to prevent would remain within the permit area or would extend outside the permit area. Referring to the breached ditch

example noted above, if drainage from the ditch remains within the permit area, 0-7 points are assigned depending on the duration and impact of the violation. For example, should the breached ditch deposit sediment on the permit, the inspector should consider the extent to which growth of vegetation or reclamation is delayed or the safe and efficient operation of other drainage controls is compromised.

Should evidence of drainage or damage extending outside the permit boundary be noted, then 8-15 points are assigned. Should the breach in the ditch allow drainage to deposit a small amount of sediment on a road or an adjoining property and does not jeopardize public safety or interfere with land use, the points assigned would be in the lower range of off-site damage. Should large amounts of sediment enter a stream and cause flooding or fish kills, the higher end of the scale should be utilized.

C. Negligence

Should the operator spoil into a pond or ditch or mine without installing approved controls, he has exhibited a greater degree of fault than negligence and should be assigned in the higher range of 13-25 points to reflect the reckless, knowing, or intentional conduct. Should the breached ditch be caused by less than diligent maintenance of the structure, ordinary negligence in the range of 0-12 points can be assigned.

D. Good Faith

The procedures for assigning good-faith points are described in Chapter 4.

REVEGETATION

A. History of Previous Violations

Refer to Chapter 4 for the formula to determine history points.

B. Seriousness

Probability of Occurrence. The condition that this standard is designed to prevent is the failure to establish a permanent, diverse, and effective vegetative cover.

The event is considered to have occurred when the operator has failed to achieve an effective ground cover for two growing seasons; 15 points should be assigned.

The failure of revegetation is likely to occur if the local seeding and planting deadline is not met, unless another way to establish a vegetative cover exists. If, on the other hand, an alternative growing method is used, the failure of revegetation would be assigned in the unlikely range (5-9 points). When an operator fails to meet the seeding and planting deadline, failure of revegetation is likely (10-14 points).

Extent of Damage. If the area where revegetation failed is small in comparison with the total area disturbed and if the damage for the violation would remain within the permit area, then the event is insignificant; 0-4 points should be assigned. In instances of actual failure of revegetation, damage is considered to extend outside the permit area. Erosion from the unvegetated areas could affect land and water outside the permit area; 8-15 points would be assigned.

C. Negligence

The assessment for degree of fault depends on the specifics of the case. If the operator seeds and plants the crops in accordance with the approved specifications during the appropriate growing season, and the crops fail, then

the negligence would be low (0-12 points would be assigned). If the operator did not attempt to revegetate the area, the violations would be assigned in the higher negligence category (12-25 points).

D. Good Faith

The procedures for assigning good-faith points are described in Chapter 4.

SPOIL ON THE DOWNSLOPE

A. History of Previous Violations

Refer to Chapter 4 for the formula to determine history points.

B. Seriousness

Probability of Occurrence. The environmental damage resulting from a slide or the inability to reclaim or properly revegetate a steep slope are the types of events which spoil on the downslope regulations are designed to prevent. Slides by themselves are not the environmental damage. It is the actual or potential consequences of slides that are important in terms of the assessment. For example, if spoil had been placed on the downslope and had actually slid and destroyed timber, caused sedimentation of streams, or personal injury, the event has occurred, and 15 points should be assigned. The movement of the spoil may not have caused any immediate environmental harm, but it is likely that the event may occur at a later time; 10-14 points should be assigned. If evidence is provided that the slide is stabilized and resources that could be damaged are not in the area, then the event could be considered as unlikely or insignificant; 0-9 points should be assigned.

Extent of Damage. If the slide remains on the permit and potential for off-site damage does not exist, 0-7 points should be assigned. However, if there is the potential for off-site damage or the slide has extended off the permit, 8-15 points should be assigned.

C. Negligence

If the operator has followed acceptable mining procedures and a slide occurs, negligence should be assigned 0-12 points. If the operator conducted mining practices in such a way that caused a slide, then negligence should be assigned in the higher category (13-25 points).

D. Good Faith

The procedures for assigning good-faith points are described in Chapter 4.

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

NOTICE OF VIOLATION

Permanent Regulatory Procedures

1. Notice of Violation Number: N88— 064 — 001 — 001 | TV 1

2. Name: TG&IF Coal Corporation — ☒ Permittee ☐ No Permit

3. Mailing Address: 330 PM Drive, Poorme, South Carolina 27771

4. Name of Mine: Weekend #2 — ☒ Surface ☐ Underground ☐ Other (Specify) 7

5. Telephone Number: 841-1414

6. County: Monday

State: SC

Originating Office Address:
OSMRE
Dog Patch Area Office
238 Puppy Lane
Wolftooth, SC 27777

Telephone Number: (913)841-4141

7. Operator's Name (If other than permittee): Yesterday Mining

8. Mailing Address: 330 PM Drive, Poorme, South Carolina 27771

9. Date of Inspection: 07/08/88

10. Time of Inspection: From 2:00 a.m./p.m. To 2:10 a.m./p.m.

11. State Permit Number: SC-1-0001

12. NPDES Number: --

13. MSHA ID Number: 02-47300

14. OSM Mine Number: --

UNDER THE AUTHORITY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87; 30 U.S.C. 1201), THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR has conducted an inspection of the above mine on the above date and has found violation(s) of the Act, the regulations or required permit condition(s) listed in the attachment(s). This Notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violation(s) within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS NOTICE ☐ DOES NOT ☐ DOES REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you ☐ are ☐ are not entitled to an informal public hearing on request, within 30 days after service of this notice (30 CFR 843.15).

This Notice shall remain in effect until it expires as provided on the reverse or is modified, terminated, or vacated by written notice of an authorized representative of the Secretary. The time for correction may be extended by an authorized representative for good cause. If you need additional time to correct the violation(s), please contact the field office named above.

IMPORTANT—Please Read Information on the Back of this Page

15. Print Name of Person Served: Joe Friday

16. Print Title of Person Served: Environmental Supervisor

17. Signature of Person Served:

18. Date of Service: 07/09/88

19. Print Name of Authorized Representative: Penney Lane

20. Signature of Authorized Representative:

ID Number: 001

Copy Distribution: White-District Office File, Blue-Permittee, Yellow-Assessment Office, Pink-Field Office, Green-Inspector

IE-161 (3/81)

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

NOV Number: K88 — 064 — 001 — 001

Violation Number: 1 of 1

NOTICE OF VIOLATION *(CONTINUATION)*

NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION

Failure to backfill and regrade contours to achieve approximate original contour including elimination of all highwalls created by mining.

PROVISION(S) OF THE REGULATIONS, ACT OR PERMIT VIOLATED

PORTION OF THE OPERATION TO WHICH NOTICE APPLIES

Western two-thirds of permit area, approximately 25 acres in cuts 11 through 30.

CORRECTIVE ACTION REQUIRED *(Including Interim Steps, If Any)*

Reclaim through backfilling and regrading all disturbed areas to approximate original contour using spoil piles and other materials disturbed by mining and eliminate all highwalls, depressions, and ridges caused by mining.

TIME FOR ABATEMENT *(Including Time for Interim Steps, If Any)*

Begin immediately and complete no later than 8/8/88.

Copy Distribution: White-District Office File, Blue-Permittee, Yellow-Assessment Office, Pink-Field Office, Green-Inspector

IE-156A (12/80)

OSM
11/13/79

NOV/CO No. N88-064-001-001
Violation No. 1 of 1

INSPECTOR'S STATEMENT

I. (A). Event Violations: Go to B if this is an obstruction to enforcement violation.

1. What harmful event was this regulation designed to prevent? (Insert the event listed on the Reference List and remember that the event is not the same as the violation.)
   Failure of the post mining land use, erosion, rills and gullies, sedimentation of streams, water pollution.

2. If the event has happened, describe it. If it has not happened, what would cause it to happen and how likely is that? (For example, if there is an area for which no sediment control is provided, has runoff from that area reached a stream? If it hasn't reached a stream, what would cause it to get there and how likely is that to happen?)
   The violation has happened, operator has failed to reclaim disturbed areas and highwalls.

3. How much damage has already occurred as a result of the violation? Also, is the damage on the permit area or does it extend off the permit area?
   About 25 acres remain unclaimed since mining ceased 5 months ago. Damage is on the permit thus far.

4. How much damage might have occurred if the violation had not been discovered by an OSMRE Inspector? Describe this potential damage. Would the damage extend off the permit area?
   Continued runoff would eventually cause erosion and sediment problems beyond the permit.

(B). Obstruction to Enforcement Violations: Answer for obstruction violations only, such as violations concerning recordkeeping, monitoring, plans, and certifications.

5. Describe how violation of this regulation actually obstructed enforcement by OSMRE and/or the public.

II. Degree of Fault: Only one question applies to each violation; first decide which question to answer.

6. If you think this violation was not the fault of the operator (perhaps due to vandalism or an act of God, for example), explain. Remember that the permittee is considered responsible for the actions of al persons working on the minesite.

7. If you think this violation was the result of not knowing about OSMRE regulations, indifference to OSMRE regulations, or the result of lack of reasonable care, explain.
   Indifference to OSMRE regulations.

8. If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

9. Was the operator in violation of a specific permit condition? Did the operator receive prior warning of the violation by the State or by OSMRE concerning this violation? If so, give the dates and the type of warning.

III. Good Faith

10. To receive good faith for compliance with an NOV or CO, an operator must have taken extraordinary measures to comply as rapidly as possible. The violation must have been issued before the time set for abatement. If you think this applies, describe how rapid the compliance was and what extraordinary measures the operator took.

OSM 723-6(a)
11/27/79

Assessment Explanation

18

NOV No. N88-064-001-001

CO No.

Name of Company TG&IF Coal Corporation

Violation No. 1 of 1

1. History of previous violations: **Points**

No history this permit 0

2. Seriousness (either A or B):

A. (1) Probability of occurrence

Delay or failure of the post mine land use caused by a failure to backfill and regrade all areas disturbed by mining to AOC is likely to occur. "Approximately 25 acres" have not been reclaimed during the past 5 months the operations have been ceased. 12

(2) Extent of potential or actual damage

Damage currently remains within the permit, but extends over 25 acres or "two-thirds" of the permit site. 7

B. Obstruction to enforcement

3. Negligence: ORDINARY NEGLIGENCE

"Indifference" 12

4. Good Faith: WILL BE CONSIDERED AFTER COMPLETE INFORMATION IS RECEIVED

DISCUSSION OF N88-064-001-001

The impact of the violation would be a delay or, ultimately, failure of the post mining land use. This would occur because of contributing factors such as erosion causing gullies and sedimentation of areas beyond the permit and eventually causing stream pollution.

For backfilling and regrading violations, the primary impact would be the permit area itself and subsequent damage through inadequate reclamation. The probability indicated in the inspector's statement is different than that actually assessed. The assessment explanation worksheet ignored the inspector's statement that the impact had occurred and reflected a likelihood of the occurrence, prompted by the short period (5 months) of the failure to reclaim. Because it is difficult to determine the time of an occurred impact for this type of infraction, the assessor chose the course most easily defendable, that is the likelihood of delayed or failed post mining land use.

Damage of an actual type was considered as restricted to the permit area because information to the contrary was not provided. A high side of the damage range was used to reflect the scope of damage with respect to the operator's liability, that is, "two-thirds" of the permitted site. This rationale accommodates violations where the same size violation would be related to substantially larger permit reclamation responsibilities, such as 25 acres unreclaimed on a 7,000-acre permit.

Without further information, the assessor assigned high normal negligence based on the inspector's "indifference" recommendation and in light of general permittee knowledge about timely reclamation requirements.

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

NOTICE OF VIOLATION

Permanent Regulatory Procedures

1. Notice of Violation Number: N88 — 008 — 259 — 012 | TV 1

2. Name: Freeflowing Coal and Mud — ☒ Permittee ☐ No Permit

3. Mailing Address: 41 Wyan Court, Elrod, Wisconsin 34772

4. Name of Mine: Surge #2 — ☒ Surface ☐ Underground ☐ Other (Specify) 7

5. Telephone Number: 773-8351

6. County: Faine

State: WI

7. Operator's Name (If other than permittee): Marvin L. Luss

8. Mailing Address: 41 Wyan Court, Elrod, Wisconsin 34772

Originating Office Address:
OSMRE
Pisby Area Office
Pisby, Wisconsin 34791

Telephone Number: (913)841-4141

9. Date of Inspection: 03/27/88

10. Time of Inspection: From 9:10 a.m. To 3:15 p.m.

11. State Permit Number	12. NPDES Number	13. MSHA ID Number	14. OSM Mine Number
WI-447-86	--	17-43582	--

UNDER THE AUTHORITY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87; 30 U.S.C. 1201), THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR has conducted an inspection of the above mine on the above date and has found violation(s) of the Act, the regulations or required permit condition(s) listed in the attachment(s). This Notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violation(s) within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS NOTICE ☐ DOES NOT ☐ DOES REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you ☐ are ☐ are not entitled to an informal public hearing on request, within 30 days after service of this notice (30 CFR 843.15).

This Notice shall remain in effect until it expires as provided on the reverse or is modified, terminated, or vacated by written notice of an authorized representative of the Secretary. The time for correction may be extended by an authorized representative for good cause. If you need additional time to correct the violation(s), please contact the field office named above.

IMPORTANT—Please Read Information on the Back of this Page

15. Print Name of Person Served: Marvin L. Luss	18. Date of Service: 03/27/88
16. Print Title of Person Served: Owner/Foreman	19. Print Name of Authorized Representative: Frank E. Dee
17. Signature of Person Served	20. Signature of Authorized Representative — ID Number: 259

Copy Distribution: White-District Office File, Blue-Permittee, Yellow-Assessment Office, Pink-Field Office, Green-Inspector

IE-161 (3/81)

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

NOTICE OF VIOLATION *(CONTINUATION)*

NOV Number: N88 — 008 — 259 — 012

Violation Number: 1 of 1

NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION

Failure to pass all surface runoff from areas disturbed by or to facilitate mining through sediment control structures.

PROVISION(S) OF THE REGULATIONS, ACT OR PERMIT VIOLATED

30 CFR 816.46(b) and WISMC 816.42(a)

PORTION OF THE OPERATION TO WHICH NOTICE APPLIES

Approximately 16 acres southwest of mining cuts D-14 through D-18 per application Map 3B of permit application WI-447-86(A).

CORRECTIVE ACTION REQUIRED *(Including Interim Steps, If Any)*

Steps:

1. Construct temporary diversion ditch along perimeter of disturbance to direct flow of surface runoff to existing ponds 8 and 14.
2. Construct to permit specifications ponds 5 and 7 as approved for areas of the violation, including seeding, mulching, and certification of the constructed ponds.
3. Remove and reclaim temporary diversion to allow drainage to flow to appropriate ponds constructed in Step 2.

TIME FOR ABATEMENT *(Including Time for Interim Steps, If Any)*

Steps:

1. Begin as soon as possible, but no later than (NLT) 12:00 noon on 3/29/88 and complete NLT 4/1/88 at 4:00 p.m.
2. Begin as soon as possible, but NLT 12:00 noon on 3/29/88 and complete NLT 4/18/88 at 4:00 p.m.
3. Remove and reclaim temporary diversion of Step 1 after completing Step 2.

Copy Distribution: White-District Office File, Blue-Permittee, Yellow-Assessment Office, Pink-Field Office, Green-Inspector

IE-156A (12/80)

OSM
11/13/79

NOV/CO No. N88-008-259-012
Violation No. 1 of 1

INSPECTOR'S STATEMENT

I. (A). Event Violations: Go to B if this is an obstruction to enforcement violation.

1. What harmful event was this regulation designed to prevent? (Insert the event listed on the Reference List and remember that the event is not the same as the violation.)
   Water pollution and sedimentation of streams.

2. If the event has happened, describe it. If it has not happened, what would cause it to happen and how likely is that? (For example, if there is an area for which no sediment control is provided, has runoff from that area reached a stream? If it hasn't reached a stream, what would cause it to get there and how likely is that to happen?)
   Sediment has left the permit area but has not reached the receiving stream, Toad Run, approximately 1/4-mile southwest of permit.

3. How much damage has already occurred as a result of the violation? Also, is the damage on the permit area or does it extend off the permit area?
   Heavy sediment flows are evident several hundred yards beyond the permit's southwest boundary and affecting approximately 3 acres of pasture.

4. How much damage might have occurred if the violation had not been discovered by an OSMRE Inspector? Describe this potential damage. Would the damage extend off the permit area?
   Sediment would have increased off permit and eventually (after several rains) reached the receiving stream.

(B). Obstruction to Enforcement Violations: Answer for obstruction violations only, such as violations concerning recordkeeping, monitoring, plans, and certifications.

5. Describe how violation of this regulation actually obstructed enforcement by OSMRE and/or the public.

II. Degree of Fault: Only one question applies to each violation; first decide which question to answer.

6. If you think this violation was not the fault of the operator (perhaps due to vandalism or an act of God, for example), explain. Remember that the permittee is considered responsible for the actions of all persons working on the minesite.

7. If you think this violation was the result of not knowing about OSMRE regulations, indifference to OSMRE regulations, or the result of lack of reasonable care, explain.
   Indifference to OSMRE regulations.

8. If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.
   Operator was warned of problem by previous inspector in report dated 12/20/87.

9. Was the operator in violation of a specific permit condition? Did the operator receive prior warning of the violation by the State or by OSMRE concerning this violation? If so, give the dates and the type of warning.
   Ponds required are part of the permit or its application.

III. Good Faith

10. To receive good faith for compliance with an NOV or CO, an operator must have taken extraordinary measures to comply as rapidly as possible. The violation must have been issued before the time set for abatement. If you think this applies, describe how rapid the compliance was and what extraordinary measures the operator took.

OSM 723-6(a)
11/27/79

Assessment Explanation

18

NOV No. N88-008-259-012

CO No.

Name of Company Freeflowing Coal and Mud

Violation No. 1 of 1

	Points
1. History of previous violations:	
NOV 87-008-257-001(1) served 6/6/87, NOPA 7/1/87	1
2. Seriousness (either A or B):	
A. (1) Probability of occurrence	
Water pollution caused by sediment from mining area lacking sediment control structures is likely to occur "after several rains (when sediment would) reach[ed] the receiving stream, Toad Run."	10
(2) Extent of potential or actual damage	
Actual damage in the form of sediment deposition has extended beyond the permit area. "Heavy sediment flows are evident several hundred yards beyond the permit's southwest boundary and affecting approximately 3 acres of pasture."	10
B. Obstruction to enforcement	
3. Negligence: HIGHER NEGLIGENCE	
Recklessness--documented prior warning by inspector in "report dated 12/20/87". (Not considered for specific permit condition points increase.)	15
4. Good Faith: WILL BE CONSIDERED AFTER COMPLETE INFORMATION IS RECEIVED	

DISCUSSION OF N88-008-259-012 AND ITS ASSESSMENT RATIONALE

Failure to pass surface runoff through a sedimentation structure is an impact (event) violation. The ultimate event that the standard was designed to prevent is water pollution through sedimentation of the stream.

The violation has occurred, failure to pass, but the impact or event has not occurred. Distinguishing between the violation and the impact of the violation is key to any assessment. Remember, the assessment is of the impact of the violation, not the occurrence of the violation. The assessor assumes the violation has occurred by the fact that the inspector has issued the notice.

In the assessment explanation, using direct quotes (in context) from the inspector's statement or narrative documents support for the points arrived at by the assessor. These quotes can also clearly justify higher or lower point range assignments.

The probability of the impact is determined as likely to occur and the conditions prompting that occurrence "after several rains" are described. Time, distance, and volume are common considerations in determining the probability of occurrence.

The extent of damage can be either actual or potential. The assessor is naturally inclined to evaluate actual damage and usually consider potential damage if the potential is well within reason. Sediment has extended beyond the permit boundary. Additionally, sediment "flows" are "heavy", extend "several hundred yards beyond the permit" boundary, and affect "approximately 3 acres" of area. Proposing 10 points accommodates extent beyond the permit and additional factors of the previous sentence. The 10 points also accommodates the unspoken mitigation that damage is only a few hundred yards beyond the permit and in fact is not noted as being close to encroaching upon the receiving stream.

Higher negligence is attributed to a clear, specific, and documented warning to the operator of the high potential for the violation during a previous inspection. Any inclusion of higher negligence should include adequate documentation to justify the increased points.

A specific permit condition was indicated as violated by the inspector's statement. The assessment did not result in additional negligence for this reason because sediment control structures are normally required of all permit applications. Specific permit conditions are usually viewed during assessment as a requirement not ordinarily found in permits for the area or type operation, or a condition specifically identified as a condition of the permit issuance.

ASSESSMENT EXAMPLES

ADMINISTRATIVE/OBSTRUCTION VIOLATIONS

PERMIT SIGN

A. History of Previous Violations

Refer to Chapter 4 for the formula to determine history points.

B. Seriousness/Administrative

Failure to post permit identification sign or signs, poor sign maintenance, or lack of information may be a serious obstruction. While it may not always seriously obstruct an inspector, the violation could obstruct the public's ability to identify an operation for enforcement purposes or to be warned of activities related to such operations.

Total lack of permit identification signs at public access to the operations could be more serious than the lack of certain items of information required to be on the sign. The seriousness of the violation will always depend on the degree of obstruction; 0-15 points should be assigned.

C. Negligence

The degree of negligence depends on the specifics of the violation. The degree may be mitigated by such factors as the number of signs posted versus the lack of information on another sign or the public's difficulty in gaining access to the site via areas required to be posted.

If an operator deliberately attempts to mislead the public or an inspector by not posting a sign or by putting incorrect information on the sign, the violation should be assigned 13-25 points to reflect the knowing or intentional conduct. If the mine site is located in a heavily populated area and access by the public is available, the operator should recognize the potential harm to the public and take steps to post legible signs. Failure to do so would be

considered negligent and points in the upper range of 1-12 should be assigned. If there is evidence that the sign was vandalized, the negligence assignment should be in the lower end of the 1-12 point range.

D. Good Faith

The procedures for assigning good-faith points are described in Chapter 4.

FAILURE TO MAINTAIN PROPER BLASTING RECORDS

A. History of Previous Violations

Refer to Chapter 4 for the formula to determine history points.

B. Seriousness/Administrative

Blasting is a hazardous activity that requires extreme care. When a permittee fails to keep the proper blasting records, it may be difficult or impossible for an inspector to determine whether the blasting operations have been carried out according to the regulations; therefore, failure to keep blasting records can be a serious obstruction. When the blasting records are incomplete, the degree of seriousness depends on whether enough information can be pieced together to determine if the blasts were in compliance with the regulations; 0-15 points should be assigned.

C. Negligence

Failure to maintain blasting records is considered recklessness unless factors exist that indicate a knowing and willful act. Where the blasting records are incomplete, the degree of fault is less, but is still serious.

For example, if the blast records are incomplete but the missing information can easily be determined, ordinary negligence applies, and points in the 1-12 range should be assigned. If the operator deliberately destroys or fails to keep blasting records in an attempt to cover up illegal practices, points in the 21-25 range should be assigned to reflect the knowing or willful conduct. As stated above, failure to maintain the records is generally considered a reckless act and will be assigned in the 13-20 point range. Movement within the range will be based on proximity to public recreation areas and residences and the operator's history with proper blasting practices, including record-keeping.

D. Good Faith

Because it is usually impossible to generate accurate blasting records for past blasts, good-faith points normally cannot be assigned for blasting record violations.

FAILURE TO MONITOR GROUND OR SURFACE WATERS

A. History of Previous Violations

Refer to Chapter 4 for the formula to determine history points.

B. Seriousness/Administrative

This standard is designed to carefully monitor any changes in ground and surface waters that may result from the mining process. It is important that monitoring results be submitted promptly so that any degradation of water resources can be promptly identified and corrective action undertaken. If the results are not submitted, degradation trends cannot be identified and enforcement efforts can be obstructed.

Up to 15 points can be assigned for obstruction of enforcement depending on the extent to which the violation obstructed enforcement efforts. For example, the moderate range of the scale (assigning 5-11 points) may be used when an operator fails to submit quarterly sample results for one quarter if results from previous quarters are on record and no degradation trends are noted.

Should the operator fail to submit any results after mining begins, points from the higher end of the scale (assigning 12-15 points) may be used, because data are not available to determine if water quality or quantity is being affected and enforcement can be obstructed.

C. Negligence

An operator conducting mining activities near high-quality streams or near public water supplies should recognize the importance of monitoring such water sources for any dagradation. If monitoring on such areas is stopped for no reason, an assignment in the high range of negligence (13-25 points) should be assigned to reflect the knowing or intentional conduct.

The lower range of negligence (0-12 points) can be assigned when monitoring is halted as a result of the monitoring contractor's inability to reach the point of discharge due to weather conditions; if the operator was using an automatic sampler and it malfunctioned; or if weather conditions precluded any discharge.

D. Good Faith

The procedures for assigning good-faith points are described in Chapter 4.

FAILURE TO CERTIFY SEDIMENTATION PONDS

A. History of Previous Violations

Refer to Chapter 4 for the formula to determine history points.

B. Seriousness/Administrative

Up to 15 points can be assigned for failure to certify sedimentation ponds, based on the degree to which enforcement was obstructed. For example, if ponds are constructed to prevent siltation of a high-quality stream, the certification is especially important to prove the structure was constructed in accordance with the approved design. Enforcement may be obstructed because the inspector cannot be sure the pond was constructed as designed. In this case, 12-15 points should be assigned.

When a structure has been in place over an extended period of time and appears to be performing adequately, enforcement may be obstructed to a much lesser degree and the moderate range of points (5-11) should be assigned.

C. Negligence

When a sedimentation structure is required to provide protection to high-quality streams, public water supplies, or populated areas, some proof is needed to assure that the structure is capable of providing that protection.
When the operator fails to provide that assurance in the form of a certification upon completion of construction of the sediment structure and immediately puts it into use, the conduct can be considered knowing or reckless; the points assigned should be in the higher range of 13-25.

If the operator fails to provide the certification upon completion of construction of the structure, but does not begin diverting runoff to it, then ordinary negligence should be assigned in the range of 0-12.

D. Good Faith

The procedures for assigning good-faith points are described in Chapter 4.

APPENDIX C

FORMS USED IN THE PENALTY ASSESSMENT PROCESS

Contents

Name of Assessment Form	Page
Cessation Order	C-1
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U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

CESSATION ORDER

Permanent Regulatory Procedures

1. Cessation Order Number — — —
TV

2. Name ☐ Permittee ☐ No Permit

Originating Office Address

3. Mailing Address

4. Name of Mine ☐ Surface ☐ Other *(Specify)* ☐ Underground

5. Telephone Number | 6. County | State

Telephone Number

7. Operator's Name *(If other than permittee)*

9. Date of Inspection

8. Mailing Address

10. Time of Inspection From ____ a.m. p.m. To ____ a.m. p.m.

11. State Permit Number	12. NPDES Number	13. MSHA ID Number	14. OSM Mine Number

UNDER THE AUTHORITY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87; 30 U.S.C. 1201), THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR has conducted an inspection of the above mine on the above date and has found that a Cessation Order must be issued for each violation(s) of the Act, the regulations, or required permit conditions listed in the attachment(s). This Order constitutes a separate Cessation Order for each condition, practice, or violation listed.

In accordance with Section 521(a) of the Surface Mining Control and Reclamation Act of 1977, YOU ARE ORDERED TO CEASE IMMEDIATELY the operations described in the attachment(s) and perform the corrective actions described in the attachment(s) within the designated abatement time. Reclamation operations not directly the subject of this Order shall continue while this Order is in effect.

You are responsible for doing all work in a safe and workmanlike manner.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS ORDER ☐ DOES NOT ☐ DOES REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you ☐ are ☐ are not entitled to an informal public hearing on request, within 30 days after service of this Order (30 CFR 843.15).

This Order shall remain in effect until it expires as provided on the reverse or is modified, terminated, or vacated by written notice of an authorized representative of the Secretary.

IMPORTANT—Please Read Information on the Back of this Page

15. Print Name of Person Served	18. Date of Service	
16. Print Title of Person Served	19. Print Name of Authorized Representative	
17. Signature of Person Served	20. Signature of Authorized Representative	ID Number

Copy Distribution: White-District Office File, Blue-Permittee, Yellow-Assessment Office, Pink-Field Office, Green-Inspector

IE-162 (3/81)

IMPORTANT—PLEASE READ CAREFULLY

Permanent Regulatory Procedures

1. *Formal Review and Temporary Relief.* You may apply for review of this Notice by submitting an application for review, within 30 days of receipt of this Notice by you or your agent to:

Hearings Division
Office of Hearings and Appeals
U.S. Department of the Interior
4015 Wilson Boulevard
Arlington, Virginia 22203
(703) 557-9200

If you apply for a formal review, you may request temporary relief from complying with this Notice. Your request must be filed with the Hearings Division at the above address prior to a decision in the formal review. The procedures for obtaining a formal review or temporary relief are contained in Title 43 Code of Federal Regulations Section 4.

2. *Informal Public Hearing.* A Notice of Violation which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. On the reverse of this page, the authorized representative has made a finding as to whether or not this Notice of Violation requires cessation of mining. If you are entitled to an informal review please notify the OSM office indicated on the reverse of this page.

No hearing will be held where the violation in question has been abated, or the hearing has been waived. Your right to an informal review will be deemed waived unless you request an informal review within 30 days after service of this Notice.

OSM may conduct the hearing later than the 30 day period with the consent of the person to whom this Notice was issued. You will be deemed to have consented to an extension of the time for holding the hearing if your request is received on or after the 21st day after the service of this Notice.

3. *Penalties.* You may submit information in writing pertaining to the violation(s) covered by this Notice within 10 days of the date that it is served on you or your agent. This information will be considered in determining the amount of penalty. You may also submit a request that the Director waive the use of the formula contained in 30 CFR Part 845 in determining the civil penalty for the violations cited in this Notice. Your request must be submitted to the Director within 10 days of service of the Notice and must include your reasons for requesting the waiver. A waiver will be granted only if the Director determines that a waiver will further abatement of violations of the Act. If you wish to submit this information, you should send it to U.S. Department of the Interior, Office of Surface Mining, Assessment Office, Washington, D.C. 20240.

For each violation covered by this Notice, a penalty of up to $5,000 may be assessed for each day during which that violation continues.

Pursuant to 30 CFR 845.13(b) the amount of the penalty may be reduced significantly if you abate the violations in the shortest possible time using extraordinary measures. If you believe you have abated one or more of the violations in the shortest possible time using extraordinary measures, contact the inspector that issued this Notice and ask for an abatement inspection.

If you fail to correct any of the violations within the time set for abatement (unless extended by the inspector) or for meeting any interim step a failure to abate cessation order will be issued by the inspector. This order will require you to cease surface coal mining operations or the portion relevant to the violations and you must be assessed a penalty of at least $750 per day each day that the violation continues up to a maximum of thirty days.

4. *Effect on Permit.* In addition, if it is determined that a pattern of violations of any requirement(s) of the Act, the regulations, or permit conditions exists, and that the violations were caused by unwarranted failure of the permittee or were willful violations, the permit may be suspended or revoked.

FOR FURTHER INFORMATION, PLEASE CONSULT Title 43 Code of Federal Regulations Section 4, Title 30 Code of Federal Regulations Chapter VII, and Title V of the Act, or CONTACT the nearest OSM Office for a copy of the "Rights of Operators and Permittees" manual.

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

NOTICE OF VIOLATION

Permanent Regulatory Procedures

1. Notice of Violation Number — — — TV

2. Name ☐ Permittee ☐ No Permit

Originating Office Address

3. Mailing Address

4. Name of Mine ☐ Surface ☐ Underground ☐ Other *(Specify)* _____

5. Telephone Number | 6. County | State

Telephone Number

7. Operator's Name *(If other than permittee)*

9. Date of Inspection

8. Mailing Address

10. Time of Inspection From _____ a.m. p.m. To _____ a.m. p.m.

11. State Permit Number | 12. NPDES Number | 13. MSHA ID Number | 14. OSM Mine Number

UNDER THE AUTHORITY OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 (P.L. 95-87; 30 U.S.C. 1201), THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR has conducted an inspection of the above mine on the above date and has found violation(s) of the Act, the regulations or required permit condition(s) listed in the attachment(s). This Notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violation(s) within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS NOTICE ☐ DOES NOT ☐ DOES REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you ☐ are ☐ are not entitled to an informal public hearing on request, within 30 days after service of this notice (30 CFR 843.15).

This Notice shall remain in effect until it expires as provided on the reverse or is modified, terminated, or vacated by written notice of an authorized representative of the Secretary. The time for correction may be extended by an authorized representative for good cause. If you need additional time to correct the violation(s), please contact the field office named above.

IMPORTANT—Please Read Information on the Back of this Page

15. Print Name of Person Served | 18. Date of Service

16. Print Title of Person Served | 19. Print Name of Authorized Representative

17. Signature of Person Served | 20. Signature of Authorized Representative | ID Number

Copy Distribution: White-District Office File, Blue-Permittee, Yellow-Assessment Office, Pink-Field Office, Green-Inspector

IE-161 (3/81)

IMPORTANT—PLEASE READ CAREFULLY

Permanent Regulatory Procedures

1. *Formal Review and Temporary Relief.* You may apply for review of this Notice by submitting an application for review, within 30 days of receipt of this Notice by you or your agent to:

Hearings Division
Office of Hearings and Appeals
U.S. Department of the Interior
4015 Wilson Boulevard
Arlington, Virginia 22203
(703) 557-9200

If you apply for a formal review, you may request temporary relief from complying with this Notice. Your request must be filed with the Hearings Division at the above address prior to a decision in the formal review. The procedures for obtaining a formal review or temporary relief are contained in Title 43 Code of Federal Regulations Section 4.

2. *Informal Public Hearing.* A Notice of Violation which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. On the reverse of this page, the authorized representative has made a finding as to whether or not this Notice of Violation requires cessation of mining. If you are entitled to an informal review please notify the OSM office indicated on the reverse of this page.

No hearing will be held where the violation in question has been abated, or the hearing has been waived. Your right to an informal review will be deemed waived unless you request an informal review within 30 days after service of this Notice.

OSM may conduct the hearing later than the 30 day period with the consent of the person to whom this Notice was issued. You will be deemed to have consented to an extension of the time for holding the hearing if your request is received on or after the 21st day after the service of this Notice.

3. *Penalties.* You may submit information in writing pertaining to the violation(s) covered by this Notice within 10 days of the date that it is served on you or your agent. This information will be considered in determining the amount of penalty. You may also submit a request that the Director waive the use of the formula contained in 30 CFR Part 845 in determining the civil penalty for the violations cited in this Notice. Your request must be submitted to the Director within 10 days of service of the Notice and must include your reasons for requesting the waiver. A waiver will be granted only if the Director determines that a waiver will further abatement of violations of the Act. If you wish to submit this information, you should send it to U.S. Department of the Interior, Office of Surface Mining, Assessment Office, Washington, D.C. 20240.

For each violation covered by this Notice, a penalty of up to $5,000 may be assessed for each day during which that violation continues.

Pursuant to 30 CFR 845.13(b) the amount of the penalty may be reduced significantly if you abate the violations in the shortest possible time using extraordinary measures. If you believe you have abated one or more of the violations in the shortest possible time using extraordinary measures, contact the inspector that issued this Notice and ask for an abatement inspection.

If you fail to correct any of the violations within the time set for abatement (unless extended by the inspector) or for meeting any interim step a failure to abate cessation order will be issued by the inspector. This order will require you to cease surface coal mining operations or the portion relevant to the violations and you must be assessed a penalty of at least $750 per day each day that the violation continues up to a maximum of thirty days.

4. *Effect on Permit.* In addition, if it is determined that a pattern of violations of any requirement(s) of the Act, the regulations, or permit conditions exists, and that the violations were caused by unwarranted failure of the permittee or were willful violations, the permit may be suspended or revoked.

FOR FURTHER INFORMATION, PLEASE CONSULT Title 43 Code of Federal Regulations Section 4, Title 30 Code of Federal Regulations Chapter VII, and Title V of the Act, or CONTACT the nearest OSM Office for a copy of the "Rights of Operators and Permittees" manual.

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

MODIFICATION OF NOTICE OF VIOLATION OR CESSATION ORDER

1. Name	☐ Permittee ☐ No Permit	Originating Office Address
2. Mailing Address		
3. Name of Mine	☐ Surface ☐ Underground ☐ Other (Specify) _____	
4. Telephone Number / 5. County / State		Telephone Number
6. Operator's Name		8. Date of Inspection
7. Mailing Address		9. Time of Inspection From _____ a.m. p.m. To _____ a.m. p.m.
10. State Permit Number / 11. NPDES Number / 12. MSHA ID Number		13. OSM Mine Number

ACTIONS TAKEN

Authority: Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201) the following action is taken:

14. Notice of Violation Number	Dated	15. Cessation Order Number	Dated
— — —		— — —	

16. VIOLATION _____ OF _____ IS MODIFIED: *(Describe Action and Justify)*

17. VIOLATION _____ OF _____ IS MODIFIED: *(Describe Action and Justify)*

18. VIOLATION _____ OF _____ IS MODIFIED: *(Describe Action and Justify)*

19. Print Name of Authorized Representative	Identification Number
20. Signature of Authorized Representative	Effective Date

Copy Distribution: White-District Files, Blue-Permittee, Yellow-Assessment Office, Pink-Field Office, Green-Inspector

IE-156 (12/80)

E13

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

VACATION OR TERMINATION OF NOTICE OF VIOLATION OR CESSATION ORDER

1. Name	☐ Permittee ☐ No Permit	Originating Office Address
2. Mailing Address		
3. Name of Mine	☐ Surface ☐ Underground ☐ Other (Specify) _____	Telephone Number
4. Telephone Number	5. County / State	
6. Operator's Name		8. Date of Inspection
7. Mailing Address		9. Time of Inspection From _____ a.m. p.m. To _____ a.m. p.m.
10. State Permit Number	11. NPDES Number / 12. MSHA ID Number	13. OSM Mine Number

ACTIONS TAKEN

Authority: Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201) the following action is taken:

14. Notice of Violation Number	Dated	15. Cessation Order Number	Dated
— — —		— — —	

16. VIOLATION _____ OF _____ IS ☐ Terminated ☐ Vacated for the Following Reasons:

17. VIOLATION _____ OF _____ IS ☐ Terminated ☐ Vacated for the Following Reasons:

18. VIOLATION _____ OF _____ IS ☐ Terminated ☐ Vacated for the Following Reasons:

19. Print Name of Authorized Representative	Identification Number
20. Signature of Authorized Representative	Effective Date

Copy Distribution: White-District Files, Blue-Permittee, Yellow-Assessment Office, Pink-Field Office, Green-Inspector

IE-159 (12/80)

CIVIL PENALTY SECTION
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
U.S. DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C. 20240

NOTICE OF PROPOSED ASSESSMENT

Notice of Violation #_____

The Civil Penalty Section has reviewed the notice of violation indicated above, information furnished by the authorized representative of the Secretary, and any information submitted by the permittee or operator pursuant to 30 CFR 845.17. Based on this review, the Civil Penalty Section has determined that the violations cited appear to have occurred and proposes the following penalties:

Violation No.	NOV received: Amount of Proposed Assessment
____ of ____	$ _____
____ of ____	_____
____ of ____	_____
____ of ____	_____
____ of ____	_____
____ of ____	_____
____ of ____	_____
TOTAL PROPOSED ASSESSMENT	$ _____

Note:

If the attached assessment worksheet shows that good faith was not considered in making this assessment (due to the length of the abatement period), you may request a modification based on consideration of good faith. To obtain a reduction of the penalty on the basis of good faith in attempting to achieve compliance, you must show that you took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before that date set for abatement. Your request for a modification should be made in writing, after the violation has been abated, and should be addressed to the Civil Penalty Section at the above address.

_____
(Date)

Civil Penalty Section
Office of Surface Mining
U.S. Department of Interior
1951 Constitution Avenue, N.W.
Washington, D.C. 20240

Dear Sir:

Pursuant to 30 CFR 845.18, I request a conference to review the proposed assessment for violations of Notice of Violation(s) #_____ and/or Cessation Order(s) #_____. My telephone number is ( ) _____.

_____
(Signature)

_____
(Name and Title)

_____
(Name of Permittee or Operator)

_____
(Address of Permittee or Operator)

Provided your request is received within 15 days as provided in 30 CFR 845.18, you will be contacted by a conference officer in order to arrange the time and place of the conference.

Pursuant 30 CFR 845.18(b)(2), at least 5 days prior to the conference, notice of the time and place of the conference must be posted at the OSM field office that has jurisdiction over the mine. Any person has the right to participate in the conference.

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

CONFERENCE REQUEST APPROVAL

RE:

This is in response to your letter(s) dated _____ in which you requested a conference. Your request has been granted and is being forwarded to the appropriate OSM office for assignment. A Conference Officer will contact you to schedule the conference. If you have any questions or need assistance, please call the appropriate Conference Officer listed on the attachment to this letter.

Sincerely,

Chief
Branch of Civil Penalty Assessments

Attachment

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
530 Gay St., S.W., Suite 500
Knoxville, TN. 37902

JUL 28 8:24 AM '87

JUL 15 1987

CONCLUSION OF CONFERENCE

Mr.

Re: Assessment Conference for:
Violation No. 1 of 1 of
Permit No.

Dear Mr.

This letter formally concludes the conference relating to the above violation.

After reviewing all of the information supplied to me at the conference and all other information available to me concerning the above violation, pursuant to 30 CFR Part 723, I am revising the assessment for the above mentioned violation shown on the attached Assessment Conference Report.

The Assessment Conference Report shows the dollar amount of the civil penalty associated with the violation for which the conference was held and reflects changes, if any, resulting from the conference. It also shows the point values assigned for the proposed assessment and the point values assigned as a result of the conference.

If you wish a formal hearing to contest the revised assessment, you must submit a petition for review within fifteen (15) days after the date you receive this letter to:

U.S. Department of the Interior
Office of Hearings and Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

In your petition, you may include a request for a formal hearing on the fact of the violation if you have not previously been granted or denied such a hearing.
Your petition must be accompanied by a check or money order payable to "Assessment Office--OSMRE" in an amount equal to the total of the assessment for which you are requesting a hearing. If you fail to submit the check or money order with

your petition, or if the check is returned for nonpayment, or if the check or money order is written for an amount less than the revised assessment, you may forfeit your right to a hearing.

The proceeds of your check or money order will be held in escrow and if, after administrative or judicial review, it is found that there was no violation or that the proposed penalty was too high, the balance will be refunded to you with interest at the rate of six (6) percent or at the prevailing Department of the Treasury rate, whichever is greater.

If you do not make a timely request for a hearing with respect to the revised violation, the assessment for the violation will become final and will be due and payable within thirty (30) days from the receipt of this letter. Payments should be made by check or money order payable to "Assessment Office--OSMRE" and sent to:

Office of Surface Mining
Reclamation and Enforcement
P.O. Box 360292 M
Pittsburgh, PA 15251

To insure proper credit of your payment, you must note on the check or money order the violation for which payment is being made.

Please read this letter carefully. If you have a question which is not answered by this letter, you may call me at

Sincerely,

Assessment Conference Officer

Enclosure

cc:
Branch of Assessments

ASSESSMENT CONFERENCE REPORT

Knoxville Field Office

Company Name:

Permit No:

Citation No:

Type of Conference ___ in person_X_telephone___letter.

Date of Conference:

Persons in Attendance	Title

Violation No.	Amount of Assessment As Revised
1 of 1	$ 340.00
	$ 340.00

Approved: _____ Date: JUL 15 1987
(Signature of Conference Officer)

ASSESSMENT CONFERENCE REPORT
(Continued)

Company Name:

Permit No:

1. Citation No:

Violation 1 of 1

Nature of the violation: Failure to conduct water monitoring and/or failure to submit results to OSM.

(b) Date for Abatement: 04/13/87 Date Served: 03/05/87
Date of Termination: 03/26/87

2. Conference Result	Proposed Assessment	Conference Assessment
(a) History/Prev. Violation		
(b) Seriousness		
(1) Probability of Occurrence		
Extent of Damage		
(2) Obstruction to Enforcement	10	10
(c) Negligence	12	12
(d) Good Faith		(-5)
TOTAL POINTS	22	17
TOTAL AMOUNT ASSESSMENT	$ 440.00	$ 340.00

EL

ASSESSMENT CONFERENCE REPORT
(Continued)

Company Name:

Permit No:

Citation No:

Violation 1 of 1

3. Narrative:
(Brief explanation of reasons for any changes in assignment of points and any additional information that was presented at the conference.)

Five (5) good faith points awarded for rapid abatement plus extraordinary measures employed. The NOV was issued on February 25, 1987, and served by certified mail on March 5, 1987. An abatement date of April 13, 1987 was set, thus giving thirty-nine (39) days for abatement. The violation was abated on March 26, 1987, twenty-one (21) days from date of mail service. Abatement occurred within fifty-four (54) percent of the time. Extraordinary measures employed were as outlined in the attached sworn statement.

Full pay agreement not returned within the established time. Case concluded unsettled.

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

Re: NOV# _____, Violation(s) _____

Dear Sirs:

Under the point system we use to set penalties (30 CFR 845), we are not required to assess a penalty for a violation contained in a notice of violation if the violation is assigned 30 points or less. In deciding whether to impose a penalty, we consider the permittee's history of violations, the seriousness of the violation, whether it was negligent or willful, and how rapidly the permittee complied. Using these criteria, we have decided not to impose a civil penalty for the violations(s) listed above. Penalties are being assessed for all other violation(s) if any, covered by the same notice of violation.

The violation(s) listed above will remain on your record unless vacated as a result of administrative or judicial review. If you should receive another Notice of Violation or Cessaton Order, all violation(s) on your record will be taken into account in determining whether a penalty should be assessed and the amount of the penalty.

Sincerely,

Chief
Branch of Civil Penalty Assessments

INSPECTION REPORT

Permittee:

County:

Operator: Not Present

Permit No.:

Inspection Date: October 2, 1987

Type of Inspection: Initial Complete

Inspector:

Action Taken: Issue NOV

Discussion

This valley fill remains abandoned in conditions described in previous inspection reports. During this inspection I observed that the front and back slopes of the embankment of basin 001 as well as the area above the spillway on the north slope of the basin were barren in places and require vegetative repair. The trash rack for the stand pipe at basin 001 is missing and should be replaced. I also observed that the spillway of basin 002 has eroded on one side into a bully 5 feet deep and 8 feet wide. The spillway requires reconstruction and replacement of riprap. These conditions are cited in violation (1) of NOV _____ and do not appear to represent any significant environmental harm.

The valley fill has not been maintained, and all of the diversion ditches require repair. Diversion ditches DD-2, DD-3, and DD-4 have filled with sediment from the eroded slopes above the fill and are no longer recognizable. A sediment fan has formed on the fill surface from the upslope erosion. Some areas of the fill surface were marshy, and the rock-lined diversions were no longer flowing. In their present condition, these diversion ditches do not adequately divert surface water runoff away from the fill and are allowing infiltration of water into the fill.

Rock-lined diversions RLD-1 and RLD-2, which are side drains designed to divert surface runoff from the fill to the downslope area, show signs of heavy scouring, which has dislodged the rock riprap to lower elevations of the channel. Rock check dams, which were to be constructed at 100-foot intervals along the length of the channel, can no longer be found. RLD-1 has eroded into a fully

Permittee:

Permit No.:

approximately 15 feet deep at the elevation of the lowest terrace. RLD-2 has eroded to a depth of 6 to 8 feet in some places, and the soft shale fill material is falling into the channel.

The lowest terrace of the fill has dry depression approximately 5 feet deep near RLF-1. The middle terrace has a depression containing water 6 inches deep near RLF-2. A breach through the crest of the terrace was draining water from the depression onto the fill outslope at a slow rate of approximately 1 to 2 gallons per minute. The upper terrace has similar breaches near RLD-1 and RLF-2. These breaches were dry during the inspection, but previous discharges have resulted in several gullies approximately 2 feet deep on the outslope of the fill. Most of the upper terrace near RLD-1 has been filled with fill material during minor surface movement of the outslope. As a result, this end of the upper terrace no longer directs surface drainage to RLF-1.

These conditions observed at the valley fill are cited in violation (2) of NOV _____. Presently, the fill appears to be generally stable, and the outslope is heavily vegetated. In addition, the rock under drain was flowing and appeared to be draining the fill mass internally. Therefore, it does not appear that the conditions cited in violation (2) are causing any significant environmental harm at this time. I photographed conditions at the valley fill during the inspection.

Service of NOV _____ will be attempted through certified mail channels. A Notice of Eligibility for an Individual Civil Penalty will accompany the notice when service is attempted.

<u>MSEIR Blocks 25 and 28 Explanation</u>

D - Failure to maintain the discharge structure of basin 001 cited under NOV _____ and FTACO _____. Failure to maintain the vegetative cover of basin 001 and the discharge structure of basin 002 cited under NOV _____ (1).

G - Failure to conduct surface water monitoring cited under NOV _____ (2) and FTACO _____.

H - Ground water monitoring is not required under this permit.

I - No blasting was authorized for this valley fill.

J - Haul road to valley fill was permitted under adjacent contour mine permits.

K - There are no refuse impoundments associated with this valley fill.

Permittee:

Permit No.:

P,U -Failure to establish a diverse, effective, and permanent vegetative cover on upper surface of valley fill cited under NOV _____ (1) and FTACO _____.

Q - Failure to maintain valley fill cited under NOV _____.

S - No highwalls were created during construction of this valley fill.

T - This valley fill is not a steep slope surface mine, and this standard does not apply.

V- Permit expired 2-25-82, and Temporary Cessation of operations is no longer applicable.

OSM
11/13/79

NOV/CO No. _____
Violation No. _____ of _____

INSPECTOR'S STATEMENT

I. (A). Event Violations: Go to B if this is an obstruction to enforcement violation.

1. What harmful event was this regulation designed to prevent? (Insert the event listed on the Reference List and remember that the event is not the same as the violation.)

2. If the event has happened, describe it. If it has not happened, what would cause it to happen and how likely is that? (For example, if there is an area for which no sediment control is provided, has runoff from that area reached a stream? If it hasn't reached a stream, what would cause it to get there and how likely is that to happen?)

3. How much damage has already occurred as a result of the violation? Also, is the damage on the permit area or does it extend off the permit area?

4. How much damage might have occurred if the violation had not been discovered by an OSMRE Inspector? Describe this potential damage. Would the damage extend off the permit area?

(B). Obstruction to Enforcement Violations: Answer for obstruction violations only, such as violations concerning recordkeeping, monitoring, plans, and certifications.

5. Describe how violation of this regulation actually obstructed enforcement by OSMRE and/or the public.

II. Degree of Fault: Only one question applies to each violation; first decide which question to answer.

6. If you think this violation was not the fault of the operator (perhaps due to vandalism or an act of God, for example), explain. Remember that the permittee is considered responsible for the actions of al persons working on the minesite.

7. If you think this violation was the result of not knowing about OSMRE regulations, indifference to OSMRE regulations, or the result of lack of reasonable care, explain.

8. If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

9. Was the operator in violation of a specific permit condition? Did the operator receive prior warning of the violation by the State or by OSMRE concerning this violation? If so, give the dates and the type of warning.

III. Good Faith

10. To receive good faith for compliance with an NOV or CO, an operator must have taken extraordinary measures to comply as rapidly as possible. The violation must have been issued before the time set for abatement. If you think this applies, describe how rapid the compliance was and what extraordinary measures the operator took.

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Assessment Worksheet
(See Part 723)

NOV # _____

CO # _____

Permit # _____

Name of Company _____

Violation # _____ of _____ **Points**

1. History of previous violations

2. Seriousness (either A or B)

   A. (1) Probability of occurrence _____

   (2) Extent of potential or actual damage _____

   B. Obstruction to enforcement _____

   Total Seriousness _____

3. Negligence _____

4. Good Faith (will be considered after complete information is received) _____

TOTAL POINTS _____

ASSESSMENT $_____

Violation # _____ of _____ **Points**

1. History of previous violations

2. Seriousness (either A or B)

   A. (1) Probability of occurrence _____

   (2) Extent of potential or actual damage _____

   B. Obstruction to enforcement _____

   Total Seriousness _____

3. Negligence _____

4. Good Faith (will be considered after complete information is received) _____

TOTAL POINTS _____

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Assessment Explanation

NOV # _____

CO # _____

Name of Company _____

Violation # _____ of _____

1. History of previous violations:

2. Seriousness (either A or B):

   A. (1) Probability of occurrence

   (2) Extent of potential or actual damage

   B. Obstruction to enforcement

3. Negligence: ORDINARY NEGLIGENCE

4. Good Faith: WILL BE CONSIDERED AFTER COMPLETE INFORMATION IS RECEIVED

CONVERSION TABLE FOR DETERMINING CIVIL PENALTIES

Points Assigned	Penalty	Points Assigned	Penalty
1	$ 20	36	$1,600
2	40	37	1,700
3	60	38	1,800
4	80	39	1,900
5	100	40	2,000
6	120	41	2,100
7	140	42	2,200
8	160	43	2,300
9	180	44	2,400
10	200	45	2,500
11	220	46	2,600
12	240	47	2,700
13	260	48	2,800
14	280	49	2,900
15	300	50	3,000
16	320	51	3,100
17	340	52	3,200
18	360	53	3,300
19	380	54	3,400
20	400	55	3,500
21	420	56	3,600
22	440	57	3,700
23	460	58	3,800
24	480	59	3,900
25	500	60	4,000
26	600	61	4,100
27	700	62	4,200
28	800	63	4,300
29	900	64	4,400
30	1,000	65	4,500
31	1,100	66	4,600
32	1,200	67	4,700
33	1,300	68	4,800
34	1,400	69	4,900
35	1,500	70 and above	5,000

Appendix E

INITIAL ASSESSMENT POINTS

INITIAL ASSESSMENT POINTS

SITUATION	POINT ASSESSED
Probability of Occurrence	
None	0
Insignificant Chance of Occurrence	2
Unlikely to Occur	6
Likely to Occur	12
Occurred	15
Extent of Damage	
Damage Confined Within the Permit Area	4
Damage Extending Outside the Permit Area	11
Negligence	
No Negligence	0
Negligence	7
Greater Degree of Fault than Negligence	20
Obstruction	
Slight Obstruction	2
Moderate Obstruction	8
Significant Obstruction	14