	U.S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT **DIRECTIVES SYSTEM**	**Subject Code:** FIN-1-1 **Transmittal Number:** 938 **Date:** DEC - 9 2008
Subject: Civil Penalty Conference Officers Manual		
Approval: Brent Wahlquist		Title: Director

CHANGE NOTICE

1. **Purpose**. This directive transmits changes to FIN-1, Conference Officer Operations Manual. This manual provides standards, policy, and procedures for use in planning, conducting, and reviewing civil penalty assessment conferences for compliance with Code of Federal Regulations, Title 30, Chapter 7, Part 845 – Civil Penalties.

2. **Summary of Changes**. The manual is changed as follows:

a. A definitions section has been added to Appendix A, Civil Penalty Conference Officer Manual.

b. The title of the directive is changed from Conference Officer Operations Manual to Civil Penalty Conference Officers Manual to eliminate any confusion about the type of conference officer the manual was prepared for.

c. References to rescinded directive CAA-1 (Civil Penalty Assessment Manual) have been removed.

d. References to "Branch of Civil Penalties" and "BCPA" were eliminated since BCPA no longer exists. Where appropriate, references were changed to "assessment officer."

e. References to "operator" have been replaced with "permittee" (see Definitions in Appendix A).

f. Many examples of documents used in the conference process were eliminated. These included documents with references to BCPA and CAA-1 or information that can be obtained from the regulations.

g. Examples of documents used in the conference process were updated and moved to a separate "Exhibits" section at the end of the manual.

3. **Procedures**. See Appendix A: Civil Penalty Conference Officer Manual

4. **Effective Date**. Upon issuance

5. **Distribution**. By electronic format

6. **Appendices**. Appendix A: Civil Penalty Conference Officer Manual

Contact: Finance and Administration Directorate, Division of Financial Management

CIVIL PENALTY
CONFERENCE OFFICERS MANUAL

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION AND OVERVIEW

This chapter presents general information about the establishment of the Office of Surface Mining Reclamation and Enforcement (OSM) and a discussion of the Civil Penalty Conference Officer Program.

1.1 General Background

National concern over extensive environmental damage caused by previous coal mining activities led to the passage of Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977 (hereafter referred to as the Act). Section 201(a) of the Act established OSM within the Department of the Interior. Code of Federal Regulations (CFR) 30, Chapter VII (parts 700-899) contains the regulations that establish procedures for implementation of the Act.

Section 518 of the Act states that any permittee:

> . . . who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty . . . . Each day of continuing violation may be deemed a separate violation for purposes of civil penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

A civil penalty is assessed only after the permittee fails to avail him/her self of the opportunity for a public hearing or other appeal rights. The permittee is then issued an order requiring payment of the assessed penalty amount.

The Act, clarified and amplified by the CFR, allows permittees the opportunity to have a public hearing when they are issued violations that require cessation of mining and are to be assessed civil penalties for actions contrary to the Act. In addition to public hearings**,** a procedure has been initiated allowing for informal assessment conferences to be conducted after a permittee has been issued a Notice of Proposed Civil Penalty Assessment (NOPA). The Conference Officer position was established in order to provide trained personnel to conduct these assessment conferences. This manual is written to establish procedures and guidelines for the Conference Officers, including the requirements for conducting assessment conferences.

1.2 General Appeal Rights

A. Within thirty (30) days after receiving a Notice of Violation (NOV) or Cessation Order (CO), the permittee may file an application for review and request for hearing under the provisions of 43 CFR Part 4.

B. As set forth at 30 CFR 843.15 and OSM Directive INE-6 (March 24, 1983), within thirty (30) days of being served a citation that requires cessation of mining, the permittee may request an informal public hearing (also known as a mine site hearing) to review or contest the violation. Forms for requesting the hearing are attached to the served citation. If the operator is dissatisfied with the results of the mine site hearing, a formal appeal may be requested under the provisions of paragraph A. above.

C. Upon receipt of the NOPA for the violation from the Assessment Officer (see Chapter 3, Civil Penalty Assessment), the permittee may request either 1. and/or 2. below:

1. Within thirty (30) days after receipt of the NOPA, the permittee may request an informal assessment conference to review or protest the proposed penalty amount. In accordance with 30 CFR 845.18, "The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later." An assessment conference will not be held on violations that have not been terminated. The purpose of the assessment conference is to discuss the amount of the penalty, not the fact of the violation. The person requesting the conference is not required to pay the proposed amount into escrow to qualify for the assessment conference. Only citations with a proposed civil penalty will be included in the assessment conference process.

2. As set forth at 43 CFR Part 4 and 30 CFR 845.19, the permittee may request a penalty hearing with the Office of Hearings and Appeals (OHA) to contest the proposed civil penalty and/or the fact of the violation, if not already requested. The request must be made within thirty (30) days after receipt of the NOPA, and the permittee must pay the proposed civil penalty amount into escrow.

D. After the informal conference, the permittee may contest the proposed penalty by submitting a petition to the OHA within thirty (30) days after the date of service of the Conference Officer's action. The petition must be accompanied by an amount equal to the reassessed or affirmed penalty, to be held in escrow pending completion of the review process. (30 CFR 845.19(a))

1.3 Definitions

A. Assessment Officer. A person who reviews NOVs and COs to determine if and for how much a civil penalty will be assessed (30 CFR 845.11) and who approves requests for informal assessment conferences.

B. Conference Officer. A person who conducts a civil penalty assessment conference.

C. Permittee/Operator. 30 CFR 701.5 defines a permittee as ". . . a person holding or required by the Act or this chapter to hold a permit to conduct surface coal mining and reclamation operations issued by a State regulatory authority pursuant to a State program, by the Director pursuant to a Federal program, or, where a cooperative agreement pursuant to section 523 of the Act has been executed, by the Director and the State regulatory authority." Operator is defined as ". . . any person engaged in coal mining that removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location." Violations of the Act are most often issued to permittees. If there is a separate entity identified as an operator on the permit, the operator is also issued the same violation. An operator, who is conducting mining operations without a permit or as a coal exploration operation, can also be issued a violation. For the purposes of the Civil Penalty Conference Officer Manual, the term "permittee" is used throughout to identify the individual representing the person or company to whom a violation was issued.

D. Reviewer/rater. A person who evaluates the Conclusion of Conference Report and approves the Conference Officer Audit Report, and who provides advice on Assessment Conference issues as requested by the Conference Officer.

E. Violation. A violation of the Act, regulations, or permit conditions. Where such violations exist, a NOV, Imminent Harm Cessation Order (IHCO, or CO), and/or Failure to Abate (the underlying NOV) Cessation Order (FTACO, or CO) will be issued.

CHAPTER 2

CONFERENCE PROCEDURES

The procedures outlined in this chapter apply to informal assessment conferences.

2.1 Purpose of Assessment Conferences

The assessment conference gives the permittee an opportunity to informally discuss the proposed assessment of penalty for a citation prior to the assessment becoming finalized and without placing any money into escrow. The assessment conference provides an opportunity for the permittee to present information that was not available at the time of the proposed assessment or to offer extenuating circumstances that may affect the proposed assessment. Any person has the right to attend and participate in the assessment conference.

The assessment conference is not a forum for discussing whether a violation occurred. Determining the validity of a violation is beyond the scope of the Conference Officer's jurisdiction, and it must be accepted that enforcement actions taken by the inspector are correct. (However, if the Conference Officer identifies what he/she believes is a problem with an enforcement action, or if the permittee asserts facts which would indicate the violation was written in error, the Conference Officer may bring these facts to the attention of the Conference Officer's supervisor. Where a dispute remains, the proper course of action for discussing the fact of the violation is the hearing procedure pursuant to section 525 of the Act.)

After the presentation and review of information, and upon obtaining concurrence from the reviewer, the Conference Officer makes a final penalty assessment decision. Settlement of all outstanding issues pertaining to the penalty assessed is to be accomplished, if possible, as it precludes further collection and legal action and the need to deny permits or take other remedial measures because of outstanding violations or penalties.

2.2 Responsibilities of the Conference Officer

As informal assessment conferences are the means for the permittee and the general public to discuss and resolve the merits and aspects of proposed assessments, it is essential that the Conference Officer be regarded as just, consistent, and accurate in the interpretation of law and procedure. The Conference Officer must be knowledgeable in the application of laws pertaining to the coal mining industry.

The Conference Officer must be impartial but objective in the decision-making process. Communication is essential so that all affected parties feel that justice prevailed and the right of expression and appeal was served. The mission of enforcement of the Act is prevalent in all decisions, but the intent of the law must always be considered. The permittee should be educated in the requirements of the Act and, more importantly, become endowed with the spirit of cooperation in endeavoring to fulfill the provisions of the Act on a voluntary basis.

The Conference Officer must possess the ability to research pertinent information in order to prepare for the conference and to evaluate presentations made at the conference. In addition, the Conference Officer must possess the technical ability to obtain and understand the facts relating to violations, including intent, seriousness, and potential or actual environmental harm. Negotiations are to be conducted rationally in order to settle the issues involved in the assessment conference process. The Conference Officer must possess the ability to listen, perceive, and evaluate information to arrive at a final conclusion about the penalty assessed, based on fair, impartial decisions rendered by facts rather than impressions or preconceived concepts.

The Conference Officer should construct and maintain a complete file for each assessment conference (see 2.5, Preparing for the Assessment Conference). Fully documenting the procedures, decision-making processes, and other efforts used in rendering a final assessment is essential. A log or history sheet can be used to record activities and other actions taken in the conference process. This form does not replace other required documents but is a brief recapitulation of actions and events encountered or contemplated during the assessment conference process. In the event of transfer or other monitoring of the case, a log or history sheet will allow continuing action to transpire without unnecessary duplication of effort.

The Assessment Officer (see Chapter 3, Civil Penalty Assessment), who is responsible for issuing the NOPA will create, establish, and maintain a case file of pertinent documents that will be provided to the Conference Officer to be made a part of a conference case file**.** The Conference Officer is responsible for ensuring that all documents relating to the violation(s) are received and made a part of the conference case file.

The Conference Officer will send a Conclusion of Conference Report to the permittee after the conference is concluded. (See 2.9, Conference Officer Audit Report, for more information.)

Typical forms and documents used by a Conference Officer are shown in the Exhibits at the end of this manual.

2.3 Scope of the Conference

A Conference Officer may affirm, increase, lower, or vacate a proposed civil penalty. Subject to the approval of the appropriate management official as specified in OSM Directive OPM-5, a Conference Officer also has the authority to modify an assessment in excess of 25 percent and $500 of the original assessment (30 CFR 845.18 (b)(4)).

2.4 Scheduling the Conference

The permittee must request a conference in writing within thirty (30) days of receipt of the NOPA. A form for requesting a conference will be included with every NOPA where a violation is assessed a civil penalty. Requests for an assessment conference will be sent to the Assessment Officer in the following offices:

- Mining operations in Appalachian Region states will be sent to: Inspection Group, Knoxville Field Office;

- Mining operations in Mid-Continent Region states will be sent to: Program Support Division, Mid-Continent Regional Office; and

- Mining operations in Western Region states will be sent to: Program Support Division, Western Regional Office.

After the conference is approved by the Assessment Officer, a copy of the conference approval and assessment case file is sent to the Conference Officer in the jurisdiction where the violation was issued.

The assessment conference must be scheduled at the earliest practical date and concluded no later than sixty (60) days after receipt of the approval letter or the end of the abatement period, whichever is later. ("*Provided*, That a failure by the Office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the [permittee] proves actual prejudice as a result of the delay." 30 CFR 845.18) The permittee should be given an opportunity to have the conference scheduled at a convenient date, time, and place. As the conference may be attended by the public, the conference site will be a location where public access is available.

Pursuant to 30 CFR 845.18(b)(2), a notice of the assessment conference must be posted at the state or OSM field or area office closest to the mine at least five (5) days prior to the scheduled conference. A copy of the letter scheduling the conference may be used as the notice. Any person shall have a right to attend and participate in the conference.

Assessment conferences may also be held by telephone or by letter. The public will be included in the following ways:

A. Telephone conferences will be arranged in advance to ensure all parties, including the public, are available. The scheduling letter should provide instructions for participation by the public.

B. An assessment conference conducted by mail will require that the permittee and all parties, including the public, provide information to be considered no later than the scheduled conference date. Mail from the permittee will be available, upon request from the public, the day on which the conference is scheduled. The scheduling letter should provide instructions for participation by the public.

The purpose of the assessment conference is to provide a forum for the permittee and other participants to discuss the proposed assessment. The permittee is contacted either by phone, by e-mail, or by regular mail to confirm the time and place for the conference; or by certified mail if prior phone contact was not possible. If the permittee cannot make the scheduled appointment and fails to reschedule the conference, or fails to appear at the conference, the conference may be concluded without any further information from the permittee. The permittee will be sent a

Conclusion of Conference Report concluding the conference to allow the permittee the opportunity to request a penalty hearing, and to finalize the case for collection purposes if the permittee does not request a hearing.

2.5 Preparing for the Assessment Conference

In preparing the conference case file, the Conference Officer should make certain that all basic documents are included in the file. Documents (see Chapter 4, Exhibits) may include:

A. Enforcement documents:

Copy of citation, including modifications/vacation/termination
Copy of inspection report narrative, MEIR, and inspection statement

B. Assessment documents:

Copy of enforcement documents (above)
Log sheet (used to monitor the status of a citation)
NOPA (including assessment worksheet/explanation)
Conference Request Form
Conference Request approval letter
Conference appointment letter

The Conference Officer should review the case file materials before the assessment conference so that missing documents can be obtained and questionable issues can be resolved prior to the conference. Missing documents should be secured from the originating office of the document.

In addition, the Conference Officer should compare the Inspector's Report and Inspector's Statement with the assessment worksheet to ensure the documents are in agreement and consistent with regulations, policies, and procedures. Other offices within OSM may be contacted if clarification is needed.

The Conference Officer will also compare the date(s) for abatement, along with any modifications, to determine if any good faith points can be awarded *(*see Chapter 3*)*. If good faith points are available, the permittee should be contacted regarding the documentation required to award good faith points. The Conference Officer should review any new material submitted by the permittee prior to the conference. If the material may lead to a revision of the NOPA, it must be verified and documentation secured to substantiate any proposed revision.

After reviewing the case file and conducting the pre-conference analysis, the Conference Officer may contact the inspector by telephone or in person to discuss the violations(s). (Similarly, the Conference Officer may contact the inspector post-conference if additional information is needed to clarify issues and address questions that result from the conference.)

Documents that may be added to the case file prior to the conference include:

A. Phone logs of conversations to clarify information;

B. Pre-assessment conference notes containing questions to be addressed;

C. A copy of the letter scheduling the conference; and

D. Sign-in sheet.

In addition, the Conference Officer may wish to have a copy of pertinent regulations (e.g., 30 CFR 845, Public Law 95-87, *Surface Mining Control and Reclamation Act*) and the *Civil Penalty Conference Officer Manual* available for reference.

2.6 Conducting the Assessment Conference

The Conference Officer is responsible for maintaining accurate and complete notes of assessment conference proceedings. The Conference Officer will open the conference with an explanation of the purpose of the conference. The Conference Officer will remind those attending the conference that the proceedings are an informal assessment conference and that it is not governed by section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings.

The Conference Officer will provide a sign-in sheet to record the attendance of those participating in the assessment conference.

After the opening remarks by the Conference Officer, the permittee may present information that is relevant to the assessment. The conference should cover the assessment points assigned for the criteria considered in the assessment process. (The criteria considered for violations are history, seriousness [including obstruction], negligence [fault], and good faith. Refer to Chapter 3 for specific information about points.) The review and analysis of assigned points will be considered in conjunction with the information provided by the permittee, the public, and other offices within OSM. The permittee may provide information that was not available at the time of the proposed assessment or offer extenuating circumstances that may have a bearing on the case. Any revisions to the points assessed must be fully documented and in accordance with the Federal regulations at 30 CFR 845.13. Good faith will be discussed if it was not considered in the original assessment. (Because of the length of the abatement time, the penalty may have been assessed prior to the end of the abatement period.)

Pursuant to 30 CFR 845.18(b)(2), any person has the right to attend and participate in the assessment conference. Any presentations by the public are made after the permittee's presentations are completed. Comments made by the public will be recorded by the Conference Officer and will become a part of the conference file. If the public presents testimony that is contrary to documentation present in the file, the Conference Officer will, following the conference, seek assistance from other offices, within or outside of OSM, to verify the public testimony.

The Conference Officer must direct the discussions to facts relevant to the assessment, not the fact of the violation. The proper forum for a permittee to contest the fact of the violation is a hearing in accordance with section 525 of the Act, not the assessment conference.

After hearing all of the evidence and testimony presented in the assessment conference, weighing all of the factors found in the case file and by personal interviews, and upon receiving concurrence from the reviewer, the Conference Officer will render a decision on the final assessment of the civil penalty.

30 CFR 845.14 *(Determination of amount of penalty*), as revised, will be used to convert points assigned to a violation to a civil penalty assessment amount**.** The Conference Officer may make the decision to affirm, raise, lower, or vacate the proposed penalty during the assessment conference, or he/she may defer the decision until further documentation is obtained. A Conference Officer also has the authority to modify an assessment in excess of 25 percent and $500 of the original assessment, but must first obtain approval of the appropriate management official.

When the Conference Officer has determined the final amount of penalty assessed, the following actions may occur to conclude the assessment conference:

A. The permittee may sign a settlement agreement and pay the penalty in full within thirty (30) days.

B. The penalty may be reduced to No Penalty Assessed.

C. The permittee may state that he is unable to pay the penalty. The Conference Officer will explain that if the penalty assessed amount is not paid within thirty (30) days, and neither the penalty assessed nor the fact of the violation are appealed within thirty (30) days of receipt of the Conclusion of Conference Report, the penalty assessment will become a Final Order and will be referred to OSM's Division of Financial Management for debt processing, including billing and collection procedures.

D. The permittee may state that he is going to contest the penalty (or the fact of the violation if not previously contested) by filing a petition for review with the OHA. The Conference Officer will discuss the timeframes for application for a hearing and will explain that an amount equal to the reassessed or affirmed penalty, to be held in escrow, must accompany the application. The permittee can be tactfully reminded that further appeal will require additional time and effort. The permittee's plan for further appeal should not have any bearing on the conference proceedings or final penalty assessed.

E. "The Conference Officer may terminate the conference when he or she determines that the issues cannot be resolved or that the [permittee] is not diligently working toward resolution of the issues" (30 CFR 845.18). The permittee will be sent a Conclusion of Conference Report to allow the permittee the opportunity to request a hearing and to finalize the case for collection purposes if the permittee does not request a hearing.

In closing the conference, the Conference Officer should thank the permittee and the public for attending. If applicable, the permittee should also be advised of the right, pursuant to 30 CFR 845.19, to request an appeal hearing. In addition, the permittee should be counseled on avoiding future violations and on abating any other existing violations as rapidly as possible.

2.7 Settling the Case

The Conference Officer should attempt to settle cases through the conference process. In many cases, agreement can be reached through conference, and this prevents additional expenditure of time and effort in the preparation of a final order and subsequent collection procedures.

2.8 Preparing Conclusion of Conference Report

The Conference Officer will send a written Conclusion of Conference Report to the permittee within thirty (30) days after the conference is held. Although the Conclusion of Conference Report should be prepared as soon as possible following the conference, there may be slight delays pending the arrival of affidavits or other documentation from the permittee, the receipt of payment with signature of permittee consenting to settlement, or for time for consulting with other officials regarding the case.

The report will document NOV or CO numbers, the original point totals and proposed assessments, the modified point totals, and modified assessments for each NOV and/or CO considered in the conference. This report should provide documentation of any revised civil penalty for each violation considered at the conference, changes in points, and the rationale for changes. The reasons for changing points must be documented, be consistent with policy, and be accurate reflections of facts made available to the Conference Officer.

2.9 Conference Officer Audit Report

The Conference Officer will prepare an audit report summarizing the conference findings to submit (along with the Conclusion of Conference Report) to a person designated to review the documents to ensure accuracy and compliance with regulations and established procedures. The reviewer will initial each section that is determined to be complete and accurate and will note any sections that require additional work or clarification. If additional work is required, the Conference Officer completes or corrects the documents and submits to the reviewer again for approval.

Within thirty (30) days of the assessment conference and following approval by the reviewer, the Conclusion of Conference Report (and forms relating to the conference) can be dated with the approval date and sent to the permittee, retaining a copy for the case file. If payment is still due, the letter and forms should be sent by certified mail, return receipt requested, so that OSM has a record of receipt by the permittee. The certified mail receipt should contain the NOV and/or CO number of the specific violation(s).

Copies of all documents sent to the permittee and reports and correspondence prepared by the Conference Officer will be made a part of the assessment case file. Documents (see Chapter 3, Exhibits) may include:

A. Enforcement documents (see 2.5 Preparing for the Assessment Conference);

B. Assessment documents (see 2.5 Preparing for the Assessment Conference); and

C. Conference documents:

1. History sheet (pre-conference notes)
2. Conference sign-in sheet
3. Conclusion of Conference Report
4. Conference Officer Audit Report

2.10 Corrections of Conference Officer Documents

If errors are discovered in a Conclusion of Conference Report or related documents that have been previously submitted and mailed, corrections will be made as follows:

A. Original pages, containing errors, should remain in the report, with a statement on the bottom of the specified page indicating that a correction follows.

B. Corrected pages follow the original erroneous pages. The Conference Officer initials and dates the correction(s).

C. The corrected Conclusion of Conference Report, and related documents if applicable, should be mailed to the permittee and a copy retained in the Conference Officer case file. The word "corrected," followed by the current date, should be placed under the original date on the Conclusion of Conference Report.

A-14

CHAPTER 3

CIVIL PENALTY ASSESSMENT

OSM has delegated the assessment process to Assessment Officers within OSM. The Code of Federal Regulations, Title 30, Part 845 contains amplification and clarification of the assessment process imposed by section 518 of the Act. The Assessment Officer reviews each NOV and CO to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of continuing violation will be a separate violation for the purpose of total assessed penalty.

This chapter provides guidelines that may be used in determining if and for how much a civil penalty should be assessed for a violation. The references for this chapter are 30 CFR 845.13 *Point system for penalties*, and 30 CFR 845.14 (as revised) *Determination of amount of penalty*.

3.1 Point System for Penalties

Points for violations are assigned for various individual criterion considered in the assessment**.** A penalty shall be assessed if a violation is assigned 31 points or more under the point system described in 30 CFR 845.13. OSM may assess a penalty for a violation assigned 30 points or less.

The criteria considered for each proposed assessment are history, seriousness (including obstruction), negligence (fault), and good faith. Points are accumulated in each criterion of history, seriousness, and negligence, but the point count may be reduced by the criterion of good faith. The total point count will determine the amount of penalty assessed.

Within fifteen (15) days of service of an NOV or CO, the pemittee may submit written information concerning the violation to the Assessment Officer and to the inspector who issued the NOV or CO. The information submitted will be considered in determining the facts surrounding the violation and the amount of the penalty (30 CFR 845.17).

Within thirty (30) days of the issuance of the NOV or CO, the Assessment Officer sends a NOPA and a worksheet showing the computation of the proposed assessment by certified mail to the permittee. Mailed enclosures will include a Request for Assessment Conference form. This form must be returned to the Assessment Officer within thirty (30) days after the permittee receives the NOPA if a conference is desired.

The points assigned are derived from analysis of the case file, the inspector's report and statement, and the actual NOV or CO. To render a totally accurate assessment, the data must be complete, comprehensive, legible, and contained in the case file.

The categories within the assessment criteria are described below.

A. History. Up to thirty (30) points can be assigned based on the history of previous violations. The assignment of history points follows a given formula:

1. One (1) point for each separate violation in an NOV at the same site within a previous 12-month period; and

2. Five (5) points for each separate violation in a CO at the same site within a previous 12-month period.

Note: "Same site" has been defined as a permitted area.

To be assessed history points, the previous violations must have been finalized. Violations are not finalized until the entire review process is complete. If a permittee fails to exercise the right of review, the violation is complete as of the date the permittee's right to review expires. If a violation is vacated, the violation is not used in assembling history points.

The Assessment Officer will review the previous violations found in the permittee case file and assign points based on the findings. The Conference Officer must ascertain that the proposed assignment of points is valid and all violations were included. History points may be affirmed, raised, or lowered depending on the results of the research and also on information supplied by the permittee in the conference.

B. Seriousness. Up to thirty (30) points can be assigned based on the seriousness of a violation. In determining the assignment of points under the seriousness criterion, the first consideration is whether the violation is an event or potential event (environmental) or an obstruction (see C. below).

Events are violations that cause or potentially could cause environmental damage, personal injury, or property damage that could or did result from the violation of the regulation.

In the assignment of penalty points, seriousness is subdivided into two elements of consideration: (1) the probability of occurrence, and (2) the extent of potential or actual damage. Under 30 CFR 845.13(b)(2)(i), probability of occurrence points are to be assigned as follows:

1.	occurred	15 points
2.	likely to occur	10-14 points
3.	unlikely to occur	5-9 points
4.	insignificant	1-4 points
5.	none	0 points

The extent of potential or actual damage points are assigned as follows:

1.	damage that could extend off-permit area	8-15 points
2.	damage confined within permit area	0-7 points

Based on the facts presented in the violation, the inspector's report and statement, or other documentation concerning the violation, the assessor determines the applicable categories within seriousness and assigns points within the two elements. For instance, if damage would occur only within the permit area, the starting point assignment would be three (3) points. Moving up or down the point scale depends on mitigating circumstances. If damage could extend beyond the permit area, the starting point assignment would be eight (8) points and move up to the maximum of fifteen (15) points. The determination of occurrences should be fine-tuned to the compounding circumstances. In the insignificant, unlikely, and likely categories, the assessor begins at midrange, three (3), seven (7), and twelve (12), respectively, and moves up or down depending on the mitigating or exacerbating circumstances. Developing an understanding for the relative severity of particular situations will determine how an assessor or Conference Officer decides the points to assign.

In the assessment conference, the permittee may present information concerning the seriousness of the violation that may create the need to affirm, raise, or lower the proposed assessment.

C. Obstructions. Obstruction (administrative) violations prevent the inspector from reviewing the overall operations of the mine to determine compliance with regulations. Similarly, violations that prevent the public from identifying the mine site (permit) or exercising rights under the Act are considered obstructions.

Up to fifteen (15) points can be assigned for obstruction violations. When the violation constitutes an obstruction, the assignment of points is based on the degree to which the violation prevented or impeded enforcement by an inspector or enforcement initiated by the public.

Obstruction violations generally involve the permittee's failure to keep records, authorizations, approved plans, or maps at or near the mine site, thereby obstructing the inspector, or the failure to post proper permit or perimeter signs which might hinder public or inspector identification of the mine site. Also included are citations issued for failure to file the required quarterly Coal Reclamation Fee report (form OSM-1) and failure to pay reclamation fees.

The general guideline for assignment of points is that actual obstruction is assessed in the 10-15 point range, while potential obstruction is assessed in the 1-9 point range.

When it appears that a violation could result in either an obstruction or an event, it may be necessary to contact the inspector to clarify the type of violation. Was the particular violation more of an obstruction to enforcement or was it clear that damage had already occurred or was likely to occur?

D. Negligence. Assigning points for the negligence criterion involves a determination of the permittee's degree of fault in committing a violation, either through an act or failure to act. The regulations specify the standard of reasonable care for permittees. The permittee is responsible for learning and following the regulations. Up to twenty-five (25) points can be assigned based on the degree of negligence.

30 CFR Part 845.13 (b)(3)(iii) states: "In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage."

Following are the categories of degree of fault as defined by regulations:

1.	no negligence	0 points
2.	negligence	1-12 points
3.	recklessness; knowing and willful conduct	13-25 points

"No negligence" means an inadvertent violation that was unavoidable by the exercise of reasonable care. (For instance, the permittee acted prudently but a violation occurred anyway due to an unpredictable event.) While the permittee cannot prevent the occurrence of the violation, points can be assigned for negligence if the permittee does not promptly abate the violation. When no negligence on the permittee's part can be discerned, no points should be given.

Ignorance of the law does not constitute grounds for a finding of "no negligence." Permittees are conclusively presumed to have knowledge of all applicable regulations. *"Negligence"* is the failure of a permittee to prevent the occurrence of, or failure to abate, any violation due to indifference, lack of diligence, or lack of reasonable care. Negligent acts include committing an act that constitutes a violation, failing to do something that is required, or attempting to do a requirement but doing it improperly.

As the regulations establish what is considered the standard of reasonable care, almost every violation involves some degree of fault. In assigning points for negligence, the assessor should always start at twelve (12) points and work down for any moderating circumstances.

"Recklessness" is a greater degree of fault than negligence, implying knowing or intentional conduct. Thirteen (13) to twenty-five (25) points are assessed for recklessness depending on the specifics of the violation. Generally, where recklessness is involved, the assessor starts at thirteen (13) and assesses upward depending on compounding circumstances. The legal definition of recklessness is disregard of a known or obvious high risk. A permittee is reckless where it would have been obvious to a reasonable operator that the course of action (an action or failure to take action) was likely to cause a serious amount of damage or harm, and the operator followed the course anyway. Reckless conduct also exists in those instances where the operator is engaged in activities inherently dangerous, requiring a greater degree of care to ensure safety.

"Knowing or willful conduct" is when the permittee is aware there is, or will be, a violation of the regulations and fails to correct or avoid the situation. A permittee is considered to be knowing or willful when:

1. A specific permit condition is violated.
2. The state has previously warned or cited regarding the same situation on the same site and there is documentation of the warning or citation.
3. OSM has previously warned or cited regarding the same situation on the same site and there is documentation of the warning or citation.

Specific permit condition violations are assessed at twenty-one (21) to twenty-two (22) points depending on the seriousness of the violation. If there were state warnings or citations, twenty-three (23) points are assessed. If there were prior OSM warnings or citations, the point total should be twenty-four (24). When a wildcatter (an operator without a permit) is involved, the maximum of twenty-five (25) points should be made.

E. Good Faith. The Assessor and/or Conference Officer will consider the good faith of the permittee in attempting to achieve rapid compliance by using extraordinary measures after notification of a violation. Rapid compliance means that measures were taken to abate the violation in the shortest possible time and abatement was achieved before the time allowed for abatement. Normal compliance is when the permittee abated the violation at the time given for abatement, but extraordinary measures were *not* used.

The good faith criterion is considered only after a violation has been abated and normally is not considered by the Assessor. Per 30 CFR 845.13 (B)(4)(iii), "If the consideration of this criterion is impractical because of the length of the abatement period, the [civil penalty] assessment may be made without considering this criterion and may be reassessed after the violation has been abated." Points for good faith may be awarded as follows:

1.	Normal compliance or lack of abatement	0 points
2.	Rapid compliance + extraordinary measures	-1 to -10 points

Considerations of good faith include the examination of initiative, consistency, and commitment of resources to determine if extraordinary measures were employed to achieve rapid compliance. Initiative would be how quickly or thoroughly the permittee began work to abate the violation. Consistency would measure or examine the degree of effort or completeness employed to eliminate the problem or violation. Commitment of resources would involve securing additional equipment or personnel, interrupting coal removal, expending extra man hours and resources, or other special measures taken to remedy the situation in the fastest available means.

The following can be used as a guide in awarding good faith points, recognizing that in order to award good faith there should be documentation that extraordinary measures were used, in addition to rapid compliance. In calculating the time set for abatement, include any extension of time given by the inspector for extenuating circumstances.

Good Faith Determination Points

Abatement occurs immediately or within 10 percent of time set	-10
Abatement occurs within 11 to 20 percent of time set	-9
Abatement occurs within 21 to 30 percent of time set	-8

Abatement occurs within 31 to 40 percent of time set	-7
Abatement occurs within 41 to 51 percent of time set	-6
Abatement occurs within 51 to 60 percent of time set	-5
Abatement occurs within 61 to 70 percent of time set	-4
Abatement occurs within 71 to 80 percent of time set	-3
Abatement occurs within 81 to 90 percent of time set	-2
Abatement occurs within 91 to 98 percent of time set	-1

CHAPTER 4

EXHIBITS

CHAPTER 4

EXHIBITS

EXHIBIT A

COH 2365 Book 5 124 8231.00 152471 7 1-17-W

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
NOTICE OF VIOLATION
Permanent Regulatory Procedures

1. Notice of Violation Number: 05-90-100-003
TV 2

2. Name: MINING COMPANY INC
☒ Permittee ☐ No Permit

3. Mailing Address: PO Box X TN 37000

4. Name of Mine: JAKESCREEK
☐ Surface ☐ Other (Specify) ☒ Underground

5. Telephone Number: 423/555-5555

6. County: Grundy

State: TN

7. Operator's Name (If other than permittee): OPERATOR CO LLC
COH 2448 CMIS 8232.00 AUSH

8. Mailing Address: BOX 1 PALMER TN 37365

9. Date of Inspection: July 13 + 14, 2005

10. Time of Inspection: From 10:00 a.m. 9:00 a.m. To 1:00 p.m. 1:00 p.m.

Originating Office Address:
Office of Surface Mining
Knoxville Field Office
530 Gay St SW
Suite 500
Knoxville TN 37902

Telephone Number: 865/545-4103 ext 156

11. State Permit Number	12. NPDES Number	13. MSHA ID Number	14. OSM Mine Number
	TN0079189		3000

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.

RECEIVED
JUL 20 2005
OSM KNOXVILLE FIELD OFFICE

IMPORTANT—Please Read Information on the Back of this Page

15. Print Name of Person Served	18. Date of Service
Ronda Todd	July 14, 2005
16. Print Title of Person Served	19. Print Name of Authorized Representative
Owner Member	Karl
17. Signature of Person Served	20. Signature of Authorized Representative / ID Number
Ronda Todd	Karl / 100

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

IE-161 (3/81)

4

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

NOV Number 05-90-100-003
Violation Number 1 of 2

NOTICE OF VIOLATION *(CONTINUATION)*

NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION

Failure To prevent additional contribution of suspended solids to streamflow outside the permit area; basin 001 discharge has colored the receiving stream gray.

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

30 CFR 942.817.41 (d) (1) and 942.817.42 and the NPDES permit.

PORTION OF THE OPERATION TO WHICH NOTICE APPLIES

Discharge of basin 001

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

Take the necessary steps to prevent contribution of suspended solids which are causing discoloring of the receiving stream.

RECEIVED
JUL 20 2005
OSM KNOXVILLE
FIELD OFFICE

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

August 17, 2005 at 9:00 am

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

IE-156A (12/80)

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

Number: V5-90-100-003
Violation Number: 2 of 2

NOTICE OF VIOLATION (CONTINUATION)

NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION

Failure to follow the approved plans for underground development waste storage; operator has allowed underground development waste to be hauled off the permit.

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

30 CFR 942. 773.17 (a) and (b)

PORTION OF THE OPERATION TO WHICH NOTICE APPLIES

Underground development waste that has been hauled off-site.

CORRECTIVE ACTION REQUIRED (Including Interim Steps, if Any)

1) Submit To OSM (address is on first page of this NOV) a map showing the location of the underground development waste, and a statement of how much waste was removed from the site, and a laboratory analysis of the waste (Test for pH, potential acidity and neutralization potential).

2) Cease hauling the waste off permit

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

1) August 17, 2005 at 9:00 am

2) Immediately

RECEIVED
JUL 20 2005
OSM KNOXVILLE
FIELD OFFICE

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

IE-156A (12/80)

EXHIBIT B

U. S. DEPT. OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
Mine Site Inspection - Federal Program

1. Permittee/Person: MINING COMPANY INC	9. Permit Number: 3000	10. Permit Type: PP
2. Address: 4 MAPLE STREET	11. Inspection Date: 07/14/2005 (MM - DD - YYYY)	12. Inspection Type: FC
3. City: WHITWELL	13. Field Office Use:	
4. State: TN	14. Permit Status: A	15. Site Status: AP
5. Zip Code: 37397	16. Facility Type: B	
6. Phone Number:	17. OSM Office #: 090	18. RSI #: 100
7. Operator if Different than Permittee:	19. Land Code: S	
8. Mine Name: JAKES CREEK	20. M.S.H.A. ID #:	21. State Code: 47
	22. County Code: 061	
	23. AVS Permittee Entity ID Number: 152471	24. Control #: 2365 - 4063 - 00

25. Performance Standard Categories

Codes: 1=Compliance, 2=Noncompliance, 3=Not Planned, 4=Not Started, 5=Noncompliance Identified Elsewhere, 6=Previously Cited

A. Administrative
1. 1 Mining within Valid Permit
2. 1 Mining within Bonded Area
3. 1 Terms & Conditions of Permit
4. 1 Liability Insurance
5. 1 Ownership and Control
6. 1 Temporary Cessation
7. 1 AML Rec. Fees -- Non-Respondent
8. 1 AML Rec. Fees -- Failure to Pay

B. Hydrologic Balance
1. 2 Drainage Control
2. 1 Inspections & Certifications
3. 1 Siltation Structures
4. 1 Discharge Structures
5. 1 Diversions
6. 1 Effluent Limits
7. 1 Ground Water Monitoring
8. 1 Surface Water Monitoring
9. 1 Drainage -- Acid-Toxic Materials
10. 1 Impoundments
11. 1 Stream Buffer Zones

C. Topsoil & Subsoil
1. 1 Removal
2. 3 Substitute Materials
3. 1 Storage and Protection
4. 4 Redistribution

D. Backfilling & Grading
1. 1 Exposed Openings
2. 4 Contemporaneous Reclamation
3. 4 Approximate Original Contour
4. 4 Highwall Elimination
5. 1 Steep Slopes (includes downslope)
6. 1 Handling of Acid & Toxic Materials
7. 1 Stabilization (rills and gullies)

E. Excess Spoil Disposal
1. 3 Placement
2. 3 Drainage Control
3. 3 Surface Stabilization
4. 3 Inspections & Certifications

F. Coal Mine Waste (Refuse Piles/Impoundments)
1. 4 Drainage Control
2. 4 Surface Stabilization
3. 2 Placement
4. 4 Inspections and Certifications
5. 3 Impounding Structures

G. Use of Explosives
1. 4 Blaster Certification
2. 4 Distance Prohibitions
3. 1 Blast Survey/Schedule
4. 4 Warnings & Records
5. 4 Control of Adverse Effects

H. 1 Subsidence Control Plan

I. Roads
1. 1 Road Construction
2. 1 Certification
3. 1 Drainage
4. 1 Surfacing and Maintenance
5. 3 Reclamation

J. Signs & Markers
1. 1 Signs
2. 1 Markers

K. 1 Distance Prohibitions

L. Revegetation
1. 1 Vegetative Cover
2. 1 Timing

M. 4 Postmining Land Use

N. Other
1) RECEIVED
2) JUL 20 2005
3) OSM KNOXVILLE FIELD OFFICE

26. Acres
a. Permitted	b. Disturbed (Est.)
14.0	9.0

27. Frequency previous 4 Calendar Qtrs.

a. Number of required complete inspections	4	c. Number of complete inspections conducted	4
b. Number of required partial inspections	8	d. Number of partial inspections conducted	6

28. Bonded Acres
0.0	a. Total bonded
0.0	b. Phase I released
0.0	c. Phase II released
0.0	d. Phase III released

29. Inspection Hours
2.0	a. Permit Review
7.0	b. Inspection Time
2.3	c. Travel Time
2.0	d. Report Writing

30. Signature Block
Karl Henn by RCM
Signature:
Karl Henn
Print Name:
Date: 07/19/05
Ron McDowell
Reviewing Official:
Date: 07/19/05

Small Business Regulatory Enforcement Fairness Act (SBREFA) ----- Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you are a small business (a business with 500 or fewer employees including those of affiliates) and wish to comment on the enforcement or compliance activities of OSM, call 1-888-REG-FAIR (1-888-734-3247).

yc 7-19-05

Revised January 1, 1999

U. S. . EPT. OF THE INTE .OR

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Mine Site Inspection

Federal Program Continuation Page

Permittee/Person: MINING COMPANY INC. | Permit Number: 3000 | Inspection Date: 07/14/2005

32. Off-Site Impact Data and Identified Violation Data

List all Federal NOV or CO actions taken or reviewed during this current OSM site visit. List the off-site impacts associated with the Federal actions taken during this site visit.

1. A. Specific State or Federal Law/Regulations Violated: 817.41(d)(1), 817.42
B. Description: SUSPENDED SOLIDS COLORED REC.STREAM
C. Performance Standard: B1 | D. Abated (Y/N): N
E. OSM Action: 3 | F. OSM Action Number: N05-090-100-003 | Viol.#: 1
G. Optional: | H. Any Off-Site Impacts (Y/N): Y
I. Longitude: | J. Latitude: | K. Elevation:

L. Off-Site Impacts

	People	Land	Water	Struct
Blasting				
Stability				
Hydrology			D	
Encroachment				
Other				

2. A. Specific State or Federal Law/Regulations Violated: 773.17(a) & (b)
B. Description: UG DEVELOP. WASTE REMOVED FROM AREA
C. Performance Standard: F3 | D. Abated (Y/N): N
E. OSM Action: 3 | F. OSM Action Number: N05-090-100-003 | Viol.#: 2
G. Optional: | H. Any Off-Site Impacts (Y/N): Y
I. Longitude: | J. Latitude: | K. Elevation:

L. Off-Site Impacts

	People	Land	Water	Struct
Blasting				
Stability				
Hydrology				
Encroachment		D		
Other				

3. A. Specific State or Federal Law/Regulations Violated:
B. Description:
C. Performance Standard: | D. Abated (Y/N):
E. OSM Action: | F. OSM Action Number: | Viol.#:
G. Optional: | H. Any Off-Site Impacts (Y/N):
I. Longitude: | J. Latitude: | K. Elevation:

L. Off-Site Impacts

	People	Land	Water	Struct
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

4. A. Specific State or Federal Law/Regulations Violated:
B. Description:
C. Performance Standard: | D. Abated (Y/N):
E. OSM Action: | F. OSM Action Number: | Viol.#:
G. Optional: | H. Any Off-Site Impacts (Y/N):
I. Longitude: | J. Latitude: | K. Elevation:

L. Off-Site Impacts

	People	Land	Water	Struct
Blasting				
Stability				
Hydrology				
Encroachment				
Other				

OSM Action

3) NOV Issued
4) FTA-CO Issued
5) IH-CO Issued (Imminent Environmental Harm)
6) ID-CO Issued (Imminent Danger to Public)
8) Abated during or before OSM Inspection
9) Follow-up of Federal Action

Off-Site Impacts

For each type of impact and resource affected, enter 'N, D, or J' to describe the degree of off-site impact:

N - Minor Occurrence
D - Moderate Occurrence
J - Major Occurrence

EXHIBIT C

N/A

U.S. DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
MODIFICATION OF NOTICE OF VIOLATION OR CESSATION ORDER

1. Name: MINING COMPANY INC ☒ Permittee ☐ No Permit	Originating Office Address: Knoxville Field Office, 530 South Gay Street, Knoxville, TN 37902
2. Mailing Address: PO Box Y Whitwell TN 37397	Inspection Group
3. Name of Mine: JakesCreek ☐ Surface ☒ Underground ☐ Other (Specify)	Telephone Number 865-545-4103 ext 156
4. Telephone Number: 423/555-5555 — 5. County: Grundy — State: TN	
6. Operator's Name: OPERATOR CO LLC	8. Date of Inspection: July 29, 2005
7. Mailing Address: Box 1 Palmer TN 37365	9. Time of Inspection: administrative From ____ a.m./p.m. To ____ a.m./p.m.
10. State Permit Number	11. NPDES Number: TN 0079189 — 12. MSHA ID Number — 13. OSM Mine Number: 3000

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
05-90-100-003	7/13+14/05	— — —	

16. VIOLATION 2 OF 2 IS MODIFIED: *(Describe Action and Justify)*
The corrective action is modified to add Step 3) Return the underground development waste to the permit area and place it at the faceup area. The location map for the off-site waste and the lab analysis have been submitted. The analysis shows that the waste is Toxic.

17. VIOLATION ____ OF ____ IS MODIFIED: *(Describe Action and Justify)*
The time for abatement is not changed (Aug. 17, 2005 9am)

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AUG 04 2005
OSM KNOXVILLE FIELD OFFICE

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

Mailed to MINING COMPANY INC ., Inc., on August 3, 2005, by Certified Mail - Receipt #7003-3110-0004-0865-6796.

Copy mailed to OPERATOR CO LLC on August 3, 2005.

19. Print Name of Authorized Representative	Identification Number
Karl Henn	100
20. Signature of Authorized Representative: Karl Henn	Effective Date: 7/29/05

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

IE-158 (12/80)

NOV/CO # 05-90-100-003
Violation No. 2 of 2

INSPECTOR'S STATEMENT

(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

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?) Don't know if it has happened. There is probably no sediment control where the man is building the road. The toxicity of the material is unknown at this time. If the material is toxic it will need to be returned to the site. If it is nontoxic a revision could be submitted to allow it to remain.

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?
The NOV requires the location to be disclosed, the amount of material that was hauled away, and laboratory analysis for the same criteria required for the planned on-site storage area. The material is off permit.

4. How much damage might have occurred if the violation had not been discovered by an OSM inspector? Describe this potential damage. Would the damage extend off the permit area?
Additional waste material would have been removed from the permit area to the off-site location, without having been tested for toxicity.

(B). Obstruction to Enforcement Violations (answer for obstruction violations only, such as violations concerning record keeping, monitoring, plans, and certifications).

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

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 mine site.

7. If you think this violation was the result of not knowing about OSM regulations, indifference to OSM 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.
Should have been evident, but operator said he thought it would be OK. OSM has allowed this sort of thing, but with prior revision approval. If operator had asked me about it I could have told him so.

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

Good Faith

10. In order 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 abated before the time set for abatement. If you think this applies, describe how rapid the compliance was and what extraordinary measures the operator took.

7/15/05
Date

Karl Hum
Authorized Representative

U. S. DEPT. OF THE INTERIOR

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Mine Site Inspection - Federal Program

1. Permittee/Person: MINING COMPANY INC	9. Permit Number: 3000	10. Permit Type: PP	
2. Address: PO BOX Y	11. Inspection Date (MM - DD - YYYY): 08/17/2005	12. Inspection Type: FP1	13. Field Office Use:
3. City: WHITWELL	4. State: TN	14. Permit Status: IN	15. Site Status: TC
5. Zip Code: 37397 -	6. Phone Number: (423) 555-5555	17. OSM Office #: 090	18. RSI #: 100
7. Operator if Different than Permittee:		20. M.S.H.A. ID #:	21. State Code: 47
8. Mine Name: JAKES CREEK MINE 1		23. AVS Permittee Entity ID Number: 152471	24. Control #: 2365 - 4063 - 00

16. Facility Type: B	19. Land Code: S	22. County Code: 061

25. Performance Standard Categories

Codes: 1=Compliance, 2=Noncompliance, 3=Not Planned, 4=Not Started, 5=Noncompliance Identified Elsewhere, 6=Previously Cited

A. Administrative
1. ___Mining within Valid Permit
2. ___Mining within Bonded Area
3. ___Terms & Conditions of Permit
4. ___Liability Insurance
5. ___Ownership and Control
6. 1 Temporary Cessation
7. ___AML Rec. Fees -- Non-Respondent
8. ___AML Rec. Fees -- Failure to Pay

B. Hydrologic Balance
1. 1 Drainage Control
2. ___Inspections & Certifications
3. 1 Siltation Structures
4. 1 Discharge Structures
5. ___Diversions
6. 1 Effluent Limits
7. ___Ground Water Monitoring
8. ___Surface Water Monitoring
9. ___Drainage -- Acid-Toxic Materials
10. ___Impoundments
11. ___Stream Buffer Zones

C. Topsoil & Subsoil
1. ___Removal
2. ___Substitute Materials
3. 1 Storage and Protection
4. ___Redistribution

D. Backfilling & Grading
1. ___Exposed Openings
2. ___Contemporaneous Reclamation
3. ___Approximate Original Contour
4. 4 Highwall Elimination
5. ___Steep Slopes (includes downslope)
6. ___Handling of Acid & Toxic Materials
7. ___Stabilization (rills and gullies)

E. Excess Spoil Disposal
1. ___Placement
2. ___Drainage Control
3. ___Surface Stabilization
4. ___Inspections & Certifications

F. Coal Mine Waste (Refuse Piles/Impoundments)
1. ___Drainage Control
2. ___Surface Stabilization
3. 1 Placement
4. ___Inspections and Certifications
5. ___Impounding Structures

G. Use of Explosives
1. ___Blaster Certification
2. ___Distance Prohibitions
3. ___Blast Survey/Schedule
4. ___Warnings & Records
5. ___Control of Adverse Effects

H. ___Subsidence Control Plan

I. Roads
1. ___Road Construction
2. ___Certification
3. 1 Drainage
4. 1 Surfacing and Maintenance
5. ___Reclamation

J. Signs & Markers
1. 1 Signs
2. 1 Markers

K. ___Distance Prohibitions

L. Revegetation
1. ___Vegetative Cover
2. ___Timing

M. ___Postmining Land Use

N. Other
___1)_____
___2)_____
___3)_____

26. Acres

a. Permitted	b. Disturbed (Est.)
14.0	9.0

27. Frequency previous 4 Calendar Qtrs.

a. Number of required complete inspections	4	c. Number of complete inspections conducted	4
b. Number of required partial inspections	0	d. Number of partial inspections conducted	7

28. Bonded Acres

0.0	a. Total bonded
0.0	b. Phase I released
0.0	c. Phase II released
0.0	d. Phase III released

29. Inspection Hours

1.5	a. Permit Review
3.8	b. Inspection Time
1.8	c. Travel Time
1.5	d. Report Writing

30. Signature Block

KH by RCM
Signature:
Karl Henn
Print Name:
Date: 08/23/05
Wilfred R. Klima
Reviewing Official:
Date: 8/23/05

Small Business Regulatory Enforcement Fairness Act (SBREFA) ----- Your Comments Are Important

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WR 8-23-05

Revised January 1, 1999

EXHIBIT D

INSPECTION REPORT

Permittee: MINING COMPANY INC

Permit No.: 3000

Date of Inspection: August 17, 2005

Type of Inspection: Partial and NOV Follow-up

Inspector: Karl

Administrative:

This deep mine stopped producing coal on July 15, 2005. A temporary cessation notice was received today and a compliance conference was held.

Hydrologic Balance:

NOV 05-090-100-003, violation 1 of 2, was issued on July 14, 2005, *for failure to prevent additional contribution of suspended solids from basin 001 to the receiving stream.* Today basin 001 was discharging clear water (pH of 7.0 and iron 1 mg/L), and was no longer coloring Jakes Creek gray. The violation is terminated, effective July 25, 2005, the day permittee called and stated the pond water had been cleared up.

Coal Mine Waste:

NOV 05-090-100-003, violation 2 of 2, was issued on July 14, 2005, *for failure to follow the approved plans for underground development waste storage by allowing waste to be hauled off the permit.* A location map and laboratory analysis for the off-site waste was received on July 25,, 2005. The waste material was toxic and on July 29th, the corrective action was modified to require the permittee to return the waste to the permitted face-up area. The permittee stated the waste had already been returned to the site soon after the NOV was issued. There is a pile of waste at the face-up, and there was none at the off-site area, where a man had since used dirt to build his road. The violation is terminated effective July 29, 2005.

Revisions:

Revision #1 is still pending approval. It will contain a plan for chemical treatment of suspended solids at basin 001. The permittee also intends to change the underground development waste storage plan in this revision.

U. S. DEPT. OF THE INTERIOR

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Mine Site Inspection - Federal Program

1. Permittee/Person: MINING COMPANY INC		9. Permit Number: 3000	10. Permit Type: PP
2. Address: PO Box Y		11. Inspection Date (MM - DD - YYYY): 08/17/2005	12. Inspection Type: FP1
3. City: WHITWELL	4. State: TN	13. Field Office Use:	
5. Zip Code: 37397 -	6. Phone Number: (423) 555-5555	14. Permit Status: IN	15. Site Status: TC
7. Operator if Different than Permittee:		16. Facility Type: B	
8. Mine Name: JAKES CREEK MINE 1		17. OSM Office #: 090	18. RSI #: 100
		19. Land Code: S	
		20. M.S.H.A. ID #:	21. State Code: 47
		22. County Code: 061	
		23. AVS Permittee Entity ID Number: 152471	24. Control #: 2365 - 4063 - 00

25. Performance Standard Categories

Codes: 1=Compliance, 2=Noncompliance, 3=Not Planned, 4=Not Started, 5=Noncompliance Identified Elsewhere, 6=Previously Cited

A. Administrative
1. ___Mining within Valid Permit
2. ___Mining within Bonded Area
3. ___Terms & Conditions of Permit
4. ___Liability Insurance
5. ___Ownership and Control
6. 1 Temporary Cessation
7. ___AML Rec. Fees -- Non-Respondent
8. ___AML Rec. Fees -- Failure to Pay

B. Hydrologic Balance
1. 1 Drainage Control
2. ___Inspections & Certifications
3. 1 Siltation Structures
4. 1 Discharge Structures
5. ___Diversions
6. 1 Effluent Limits
7. ___Ground Water Monitoring
8. ___Surface Water Monitoring
9. ___Drainage -- Acid-Toxic Materials
10. ___Impoundments
11. ___Stream Buffer Zones

C. Topsoil & Subsoil
1. ___Removal
2. ___Substitute Materials
3. 1 Storage and Protection
4. ___Redistribution

D. Backfilling & Grading
1. ___Exposed Openings
2. ___Contemporaneous Reclamation
3. ___Approximate Original Contour
4. 4 Highwall Elimination
5. ___Steep Slopes (includes downslope)
6. ___Handling of Acid & Toxic Materials
7. ___Stabilization (rills and gullies)

E. Excess Spoil Disposal
1. ___Placement
2. ___Drainage Control
3. ___Surface Stabilization
4. ___Inspections & Certifications

F. Coal Mine Waste (Refuse Piles/Impoundments)
1. ___Drainage Control
2. ___Surface Stabilization
3. 1 Placement
4. ___Inspections and Certifications
5. ___Impounding Structures

G. Use of Explosives
1. ___Blaster Certification
2. ___Distance Prohibitions
3. ___Blast Survey/Schedule
4. ___Warnings & Records
5. ___Control of Adverse Effects

H. ___Subsidence Control Plan

I. Roads
1. ___Road Construction
2. ___Certification
3. 1 Drainage
4. 1 Surfacing and Maintenance
5. ___Reclamation

J. Signs & Markers
1. 1 Signs
2. 1 Markers

K. ___Distance Prohibitions

L. Revegetation
1. ___Vegetative Cover
2. ___Timing

M. ___Postmining Land Use

N. Other
___1)_____
___2)_____
___3)_____

26. Acres

a. Permitted	b. Disturbed (Est.)
14.0	9.0

27. Frequency previous 4 Calendar Qtrs.

a. Number of required complete inspections	4	c. Number of complete inspections conducted	4
b. Number of required partial inspections	0	d. Number of partial inspections conducted	7

28. Bonded Acres

0.0	a. Total bonded
0.0	b. Phase I released
0.0	c. Phase II released
0.0	d. Phase III released

29. Inspection Hours

1.5	a. Permit Review
3.8	b. Inspection Time
1.8	c. Travel Time
1.5	d. Report Writing

30. Signature Block

KH by RCM
Signature:
Karl Henn
Print Name:
Date: 08/23/05
Wilfred R. Klima
Reviewing Official:
Date: 8/23/05

Small Business Regulatory Enforcement Fairness Act (SBREFA) ----- Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you are a small business (a business with 500 or fewer employees including those of affiliates) and wish to comment on the enforcement or compliance activities of OSM, call 1-888-REG-FAIR (1-888-734-3247).

VK 8-23-05

INSPECTION REPORT

Permittee: MINING COMPANY INC

Permit No.: 3000

Date of Inspection: August 17, 2005

Type of Inspection: Partial and NOV Follow-up

Inspector: Karl

Administrative:

This deep mine stopped producing coal on July 15, 2005. A temporary cessation notice was received today and a compliance conference was held.

Hydrologic Balance:

NOV 05-090-100-003, violation 1 of 2, was issued on July 14, 2005, *for failure to prevent additional contribution of suspended solids from basin 001 to the receiving stream.* Today basin 001 was discharging clear water (pH of 7.0 and iron 1 mg/L), and was no longer coloring Jakes Creek gray. The violation is terminated, effective July 25, 2005, the day permittee called and stated the pond water had been cleared up.

Coal Mine Waste:

NOV 05-090-100-003, violation 2 of 2, was issued on July 14, 2005, *for failure to follow the approved plans for underground development waste storage by allowing waste to be hauled off the permit.* A location map and laboratory analysis for the off-site waste was received on July 25,, 2005. The waste material was toxic and on July 29th, the corrective action was modified to require the permittee to return the waste to the permitted face-up area. The permittee stated the waste had already been returned to the site soon after the NOV was issued. There is a pile of waste at the face-up, and there was none at the off-site area, where a man had since used dirt to build his road. The violation is terminated effective July 29, 2005.

Revisions:

Revision #1 is still pending approval. It will contain a plan for chemical treatment of suspended solids at basin 001. The permittee also intends to change the underground development waste storage plan in this revision.

EXHIBIT E

W/ 8.22-05

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: MINING COMPANY INC ☒ Permittee ☐ No Permit	Originating Office Address: Knoxville Field Office 530 South Gay St Suite 500 Knoxville TN 37902
2. Mailing Address: PO Box Y Whitwell TN 37397	
3. Name of Mine: Jakes Creek ☐ Surface ☒ Underground ☐ Other (Specify)	Telephone Number: 865/545-4103 ext 156
4. Telephone Number: 423/555-5555 5. County: Grundy State: TN	
6. Operator's Name: OPERATOR CO, LLC	8. Date of Inspection: August 17, 2005
7. Mailing Address: Box 1 Palmer TN 37365	9. Time of Inspection From 9:15 a.m. p.m. To 1:00 a.m. p.m.
10. State Permit Number	11. NPDES Number: TN0079189
12. MSHA ID Number	13. OSM Mine Number: 3000

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
05-90-100-003	7/13+14/05	— — —	

16. VIOLATION 1 OF 2 IS ☒ Terminated ☐ Vacated for the Following Reasons:

Basin 001 is discharging clear water and is no longer causing discoloring of the receiving stream.

17. VIOLATION 2 OF 2 IS ☒ Terminated ☐ Vacated for the Following Reasons:

A location map and laboratory analysis for the off-site underground development waste has been received, and the waste has been returned to the permit area and stored at the fareup area.

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

RECEIVED
AUG 30 2005
OSM KNOXVILLE FIELD OFFICE

19. Print Name of Authorized Representative	Identification Number
Karl	100
20. Signature of Authorized Representative	Effective Date: V. 1 of 2 7/25/05 V. 2 of 2 7/29/05

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

OSM-159 (12/80)

U. S. DEPT. OF THE INTERIOR

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Mine Site Inspection - Federal Program

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2. Address: PO BOX Y		11. Inspection Date (MM - DD - YYYY): 08/17/2005	12. Inspection Type: FP1
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5. Zip Code: 37397 -	6. Phone Number: (423) 555-5555	14. Permit Status: IN	15. Site Status: TC
7. Operator if Different than Permittee:		16. Facility Type: B	
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		19. Land Code: S	
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F. Coal Mine Waste (Refuse Piles/Impoundments)
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G. Use of Explosives
1. ___Blaster Certification
2. ___Distance Prohibitions
3. ___Blast Survey/Schedule
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N. Other
___1)_____
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26. Acres

a. Permitted	b. Disturbed (Est.)
14.0	9.0

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0.0	a. Total bonded
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0.0	c. Phase II released
0.0	d. Phase III released

29. Inspection Hours

1.5	a. Permit Review
3.8	b. Inspection Time
1.8	c. Travel Time
1.5	d. Report Writing

30. Signature Block

KH by RCM
Signature:
Karl Hann
Print Name:
Date: 08/23/05
Wilfred R. Klima
Reviewing Official:
Date: 8/23/05

Small Business Regulatory Enforcement Fairness Act (SBREFA) ----- Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you are a small business (a business with 500 or fewer employees including those of affiliates) and wish to comment on the enforcement or compliance activities of OSM, call 1-888-REG-FAIR (1-888-734-3247).

VK 8-23-05

Revised January 1, 1999

INSPECTION REPORT

Permittee: MINING COMPANY INC

Permit No.: 3000

Date of Inspection: August 17, 2005

Type of Inspection: Partial and NOV Follow-up

Inspector: Karl

Administrative:

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NOV 05-090-100-003, violation 2 of 2, was issued on July 14, 2005, *for failure to follow the approved plans for underground development waste storage by allowing waste to be hauled off the permit.* A location map and laboratory analysis for the off-site waste was received on July 25,, 2005. The waste material was toxic and on July 29th, the corrective action was modified to require the permittee to return the waste to the permitted face-up area. The permittee stated the waste had already been returned to the site soon after the NOV was issued. There is a pile of waste at the face-up, and there was none at the off-site area, where a man had since used dirt to build his road. The violation is terminated effective July 29, 2005.

Revisions:

Revision #1 is still pending approval. It will contain a plan for chemical treatment of suspended solids at basin 001. The permittee also intends to change the underground development waste storage plan in this revision.

EXHIBIT F-1

United States Department of the Interior

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

CITATION ENCLOSED

AUG 12 2005

Remail 08/15/05

NOTICE OF PROPOSED CIVIL PENALTY ASSESSMENT (NOPA)

name
address

RE: company name
CITATION NO. **N05-090-100-003** PERMIT NO. 3000

Dear Sir:

Under the authority of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et. seq., you were issued Notice of Violation N05-090-100-003. In accordance with 30 CFR Part 845, you are hereby issued a proposed assessment in the amount of **$4,620.00**.

Carefully read this letter and the enclosed information concerning the requirements for payment of civil penalty assessments. Information regarding the requirements for obtaining informal and formal review of the proposed penalty is also enclosed.

If the enclosed 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 violations in the shortest possible time and that abatement was achieved before the date set for abatement. Your request for a modification should be made in writing, after the violations have been abated, and should be addressed to the Program Support Group at the above address. You should enclose a notarized affidavit describing the extraordinary measures taken.

A copy of the Inspector's Statement and Assessment Explanation, which contain th rationale for the assessment, may be obtained by verbal or written request. Verbal requests may be made to Brenda Summerour at (865) 545-4103, Extension 186

If you have questions, you may call a Civil Penalty Assessment representative at (865) 545-4103, Extension 147 or 165.

Sincerely,

Wilfred R. Klimas

TAKE PRIDE IN AMERICA

Wilfred R. Klimas, Supervisor
Inspection Group

1

OSM 723-6
Revised 03/19/92

Assessor: DE
Date: 08/02/05

ASSESSMENT WORKSHEET

Citation #: N05-090-100-003

PERMIT # 3000

NAME OF COMPANY: company name

Violation 1 of 2	POINTS
1. History of Previous Violations	0
2. Seriousness	
A.(1) Probability of Occurrence	15
(2) Extent of Damage Potential or Actual	13
B. Obstruction to Enforcement	0
3. Negligence	12
4. Good Faith	
TOTAL POINTS	40
ASSESSMENT	2200.00

Violation 2 of 2	POINT
1. History of Previous Violations	0
2. Seriousness	
A.(1) Probability of Occurrence	15
(2) Extent of Damage Potential or Actual	11
B. Obstruction to Enforcement	0
3. Negligence	16
4. Good Faith	
TOTAL POINTS	42
ASSESSMENT	2420.00

EXHIBIT F-2

May 4, 2008

NOTICE OF PROPOSED CIVIL PENALTY ASSESSMENT (NOPA)

Name
Address

RE: Notice of Violation N08-020-179-001, "McKinley mine", Federal Permit NM-0001J

Dear Sir or Madam:

Under the authority of THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, 30 U.S.C. 1201 et seq., on April 24, 2008, you were served; **Notice of Violation N08-020-179-001** via certified mail.

Office of Surface Mining regulations at 30 CFR PART 845 establish a point system to evaluate each violation cited in a Notice of Violation or Cessation Order. In deciding whether to propose a penalty for a violation cited in a Notice of Violation, the permittee's history of previous violations, the seriousness of the violation, and the degree of negligence involved in the violation are considered. If the permittee has abated the violation by the time the proposed assessment is prepared, good faith in complying may also be considered. Under the point system, a penalty is not required when a violation is assigned a total of 30 points or less.

However, in accordance with the regulations under 30 CFR 845.12(c) this office will exercise its discretion to assess a penalty for violations assigned 30 points or less, when points assigned under 30 CFR 845.13 to a particular violation reach a certain threshold limit, in any one of the following categories: "History" 12 or more points, "Seriousness" 21 or more points, "Obstruction" 12 or more points, and "Negligence" 15 or more points.

Therefore, in accordance with 30 CFR Part 845, and the criteria above, you are hereby issued a proposed civil penalty assessment for this violation, in the amount of **$1,100.00**

Carefully read this letter and the enclosed information concerning the requirements for payment of civil penalty assessments. Information regarding the requirements for obtaining informal and formal administrative review of the proposed penalty is also enclosed.

If the enclosed Assessment Worksheet shows that good faith in achieving compliance was not considered in making the assessment, you may request a modified assessment based on consideration of good faith. To request consideration of good faith, you must show that extraordinary measures were taken to abate the violation(s) in the shortest possible time and that abatement was achieved before the time set for abatement. Your request should be made in writing, after the violation(s) have been abated, and should be addressed to the Program Support Division, at the address above.

If you have any questions, you may call Carl R. Johnston, Northwest Branch, at (303) 293-5038.

Sincerely,

James Fulton, Chief
Denver Field Division

enclosures

cc: OSM Albuquerque Field Office
OSM - Farmington Area Office
BLM Farmington District Office
BIA Navajo Area Office
Navajo Nation Mineral Department

Assessor #: 61

ASSESSMENT EXPLANATION

NOV # N08-020-179-001

Company Name / Permittee: name

Violation # 1 of 1

Nature of Violation: Conducting blasting operations using an unlicensed blaster.

Provision Violated: 30 CFR 955.2

	Points
History of Previous Violations:	0

NONE

Seriousness: (Part A or B)

A. Event the standard was designed to prevent:

Damage to Public and Private Property and Endangerment to the Public's Health and Safety

(1) **Probability of Occurrence:** 1

Damage to Public and Private Property and Endangerment to the Public's Health and Safety, as a result of the permittee's failure to employ a certified / licensed blaster for a shot on February 2, 2008, has an insignificant change of occurrence. Consequently the point scale for "Insignificant Chance of Occurrence" (0-4 pts) is warranted and 1 point is assigned.

(2) **Extent of Actual or Potential Damage:** 8

The Inspector did not indicate in his report the exact location of the February 2, 2008, blast relative to the permit boundary other than stating the blast was in Pit 14C. No shot record for the blast was provided to indicate whether or not the blast was within the limits established by the regulations. However potential damage(s) would include the breakage of windows, cracking of walls and plaster, etc., at the residence as a result of permitting an uncertified / unlicensed to supervise the blast. Any damage to the residence would be considered to have occurred off the permit area. Consequently, the lower end of the point scale for "off-permit damage" (8-15 pts) is warranted and 8 points are assigned.

TOTAL Seriousness: 9

ASSESSMENT EXPLANATION

NOV # N08-020-179-001

Company Name / Permittee: name

Violation # 1 of 1

B. **Obstruction to Enforcement:** N/A

Negligence: 21

Greater Degree of Fault than Negligence. Reckless. The Inspector indicates in his report that the blaster in charge of the February 2, 2008, shot did have a blasting license issued by the State of New Mexico, however, his certification from OSM to conduct blasting operations on Indian lands operations had expired in May 2007. The Inspector also states that the permittee had at least three other blasters who hold current OSM certification to conduct blasting operations on Indian lands. Blasting is a dangerous operation to be conducted by only certified blasters trained in the use of explosives. As such, these trained personnel are required to undergo occasional retraining and recertification. Consequently, the scale for "greater degree of fault than negligence" (13-25 pts) is warranted and 21 points are assigned.

Good Faith: 0

No abatement time or measures were given for this point-in-time violation. Consequently, no good faith points can be awarded.

ASSESSOR #: 61

ASSESSMENT WORKSHEET

PERMIT: NM-0001J

NOV: N08-020-179-001

Company Name / Permittee: name

VIOLATION 1 of 1

POINTS

1. History of Previous Violations: 0

2. Seriousness (Part A (Event) or Part B (Obstruction))

A. Event violations
(1) Probability of Occurrence: 1
(2) Extent of Actual or Potential Damage: 8

TOTAL Event Seriousness: 9

B. Obstruction to Enforcement: N/A

3. Negligence: 21

4. Good Faith: 0

TOTAL POINTS: 30
ASSESSMENT: $1,100.00

VIOLATION _ of _

POINTS

1. History of Previous Violations: N/A

2. Seriousness (Part A (Event) or Part B (Obstruction))

A. Event violations
(1) Probability of Occurrence: N/A
(2) Extent of Actual or Potential Damage: N/A

TOTAL Event Seriousness: N/A

B. Obstruction to Enforcement: N/A

3. Negligence: N/A

4. Good Faith: N/A

TOTAL POINTS: N/A
ASSESSMENT: N/A

EXHIBIT G-1

RM

United States Department of the Interior

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

RECEIVED
AUG 30 2005
OSM KNOXVILLE FIELD OFFICE

_____
(Date)

REQUEST FOR INFORMAL ASSESSMENT CONFERENCE

RECEIVED
AUG 25 2005
OSM-INSPECTION
KNOXVILLE

Wilfred R. Klimas, Supervisor
Inspection Group
OSMRE - Knoxville Field Office
530 Gay Street, S.W., Suite 500
Knoxville, Tennessee 37902

RE: company name
CITATION NO. N05-090-100-003 PERMIT NO. 3000

Dear Mr. Klimas:

Pursuant to 30 CFR 723.18 or 30 CFR 845.18, I request a conference on behalf of company name to review the proposed assessment for violations of the referenced citation.

My telephone number is telephone #

_____
(Signature of Requestor)

TODD MANAGER
(Name and Title of Requestor)

address
(Address of Requestor)

_____

Provided your request is received within 30 days of the date the proposed assessment or reassessment is received, as provided in 30 CFR 723.18 (a) or 30 CFR 845.18(a), you will be contacted by a conference officer in order to arrange the time and place of the conference. Only the violations assessed a proposed penalty will be reviewed.

Pursuant to 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 Office of Surface Mining Reclamation and Enforcement Field Office that has jurisdiction over the mine. Any person has the right to participate in the conference.

TAKE PRIDE IN AMERICA

EXHIBIT G-2

CONFERENCE REQUEST FORM

U.S. Department of the Interior
Office of Surface Mining
P.O. Box 46667
Denver, CO 80201-6667

ATTENTION: Carl R. Johnston, Northwest Branch
Program Support Division

OR FAX to: 303-293-5032 followed by a signed original request.

Pursuant to 30 CFR 845.18, I request a conference to review the proposed assessment for violations of Notice of Violation # N08-020-179-001.

My telephone number is (___) _____.

_____
(Signature) (Date)

_____
(Please Print Name and Title)

_____
(Name of Permittee or Operator)

_____
(Street Address or PO Box)

_____
(City, State, Zip Code)

Provided your request is **received** within 30 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 to 30 CFR 845.18(b)(2), at least 5 days prior to the conference, OSM will post notice of the time and place of the conference at the OSM field office that has jurisdiction over the mine. Any person has the right to participate in the conference.

Please keep a copy of the completed form for your files.

PAYMENT AND APPEAL INFORMATION

I. PAYMENT PROCEDURES

Unless you request an informal assessment conference or formal administrative review of the penalty in accordance with the instructions set forth below, the proposed civil penalty assessed in the accompanying NOTICE OF PROPOSED CIVIL PENALTY ASSESSMENT (NOPA) will be re-issued as a FINAL ORDER thirty (30) days after receipt of this letter. If there is a pending appeal for review of the citation under 30 CFR 843.16, the FINAL ORDER will be issued after conclusion of the appeal. Payment must be received by the Office of Surface Mining (OSM), Collections Team, within 30 days after the issuance of the FINAL ORDER or the debt will be considered delinquent and the following sequence of charges will be applied to your account: (1) Interest calculated at the current Treasury rate will be assessed from the day when payment of the civil penalty was first due. (2) Administrative costs will be incurred in the processing and handling of the delinquent debt, such as the cost of referring the account to a debt collection company. (3) If any portion of the civil penalty remains unpaid ninety (90) days after the assessment is first due, you will be subject to a 4 percent penalty per year upon the balance due calculated from the first day of delinquency. This penalty will accrue at the rate of one-half of one percent for each month or portion thereof that the balance remains unpaid.

Payment should be made by check or money order, payable to the "Office of Surface Mining" and mailed to:

Office of Surface Mining
PO Box 979068
St Louis, MO 63197-9000

Payments by courier delivery should be sent to:

U.S. Bank
Government Lockbox 979068
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

To assure proper credit for your payment, please note on your check or money order the citation number for which payment is being made. If payment of the civil penalty in a lump sum will result in severe financial hardship please contact a collection specialist immediately at (303) 236-0330 to discuss installment terms.

Please note that, even though payment is not delinquent until 30 days after the assessment becomes a Final Order, a record of this civil penalty will be placed on the Applicant Violator System (AVS) at the time a Final Order is issued. Placement on AVS may block the issuance of any pending permit.

Federal law also authorizes the collection of the debt (created by issuance of a Final Order) by administrative offset against any payments or refunds due you from the Federal Government. You would have opportunity to inspect and copy OSM records pertaining to this debt, and/or enter into a written agreement with OSM to repay this debt, before such offset occurs.

II. TO REQUEST AN INFORMAL ASSESSMENT CONFERENCE

If you wish an informal assessment conference with a representative of OSM to review the amount of this proposed assessment, you must submit a written request within thirty (30) days after you receive this letter as provided at 30 CFR 845.18(a) [30 CFR 725.18(a) for interim program operations]. You may use the enclosed form to request an informal assessment conference by sending your request to:

Carl R. Johnston, Northwest Branch
Office of Surface Mining
P.O. Box 46667
Denver, CO 80201-6667

or by telecopying to the number on the form.

III. TO REQUEST A FORMAL HEARING

If you wish a formal hearing before an Administrative Law Judge under Section 518 of SMCRA [30 U.S.C. 1268] (30 CFR 845.19) to contest either the proposed penalty assessment or the fact of the violation, or both, you must file a Petition for Review together with payment for the full amount of the civil penalty assessed. Your payment will be deposited in an escrow account until there is a final decision on the amount, if any, that is due. The fact of the violation may not be contested if it has been previously decided in a formal administrative review pursuant to 30 CFR 843.16. The dates for filing the Petition for Review are: (1) If you are not requesting an informal assessment conference, you have 30 days from receipt of this letter to file the Petition for Review with escrow payment; and (2) If an informal assessment conference has been held, you have 30 days from receipt of the conclusion of the conference to file the Petition for Review with the escrow payment.

Your escrow payment must be made by check or money order payable to the "Office of Surface Mining" **In order to assure proper credit for your payment, please write the number of the NOV or CO and the pertinent violations(s) on the front of the check or draft.** Attach the draft or check to the petition and send to:

U. S. Department of the Interior
Office of Hearings and Appeals
801 N. Quincy Street
Arlington, Virginia 22203

The requirements for the contents of the Petition for Review are set forth at 43 CFR 4.1152.

If you wish a hearing to contest some, but not all, of the assessed penalties under Section 518, you must indicate the specific violation(s) for which you want a hearing. You must pay into escrow the proposed penalty for those violations. However, with respect to the uncontested penalties, you must pay them within 30 days after the assessment becoming a Final Order to avoid the additional charges described in Section I.

If it is determined through administrative review of the proposed penalty that no violation occurred, or that the amount of the penalty should be reduced, OSM will refund the amount with appropriate interest. However, all refunds are subject to administrative offset for any other outstanding civil penalty debts and/or delinquent reclamation fees you may owe. You would have opportunity to inspect and copy OSM records pertaining to such other debt, and/or enter into a written agreement with OSM to repay such other debt, before such offset would occur.

Please be advised that failure to forward the amount of the proposed assessment along with the Petition for Review under Section 518 of SMCRA will result in a dismissal of your Petition.

Since you are requesting a formal hearing, you may want to have an attorney assist you in the presentation of your case. However, you are entitled to represent yourself.

Locations for hearings are selected by the Administrative Law Judge with due regard for the convenience of the parties and witnesses.

EXHIBIT H

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
710 Locust Street, Second Floor
Knoxville, TN 37902

September 7, 2005

CONFERENCE REQUEST APPROVAL

Mr. Todd K
Manager

Palmer, TN 37365

Subject: company name
Violation: 1 of 1 of N05-090-100-003
Permit: 3000

Dear Mr. K

This is in response to your letter dated August 30, 2005, in which you requested a conference. Your request for the conference has been granted. One of our Conference Officers will be contacting you to schedule the conference. If you have questions or need assistance, please call me at (865) 545-4103, extension 186.

Sincerely,

Brenda A. Summerour

Brenda A. Summerour
Secretary

TAKE PRIDE IN AMERICA

EXHIBIT I

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
710 Locust Street, Second Floor
Knoxville, TN 37902

September 8, 2005

Mr. Todd K

Palmer, Tennessee 37365

Subject: company name
Violation No: 1 of 1 of N05-090-100-003
Permit: 3000

Dear Mr. K

You have been scheduled for an assessment conference on the above referenced citation for September 21, 2005 at 9:00 a.m. at the following address:

Department of the Interior
Office of Surface Mining
John J. Duncan Federal Building
710 Locust Street, Second Floor
Knoxville, Tennessee 37902

Please be prepared to submit any material for consideration before or during the conference that addresses the violation or the penalty. You may be prepared to finalize the case at the conclusion of the conference that may include making payment for the agreed penalty. This conference may be held in person, by telephone, or by submitting any written material received by the scheduled conference date. Any person has a right to attend and participate in the conference.

If it is necessary to reschedule the conference due to circumstances beyond your control, please contact me at (865) 545-4103, extension 165. Only one rescheduling will be considered.

Sincerely,

Ron McDowell

Ron McDowell
Assessment Conference Officer

TAKE PRIDE IN AMERICA

EXHIBIT J-1

[Date]

CONCLUSION OF CONFERENCE

Mr./Ms.
[Title]
[Address]

RE: Notice of Violation N00-000-000-000, "[Mine Name]," Federal Permit 00-00000

Dear Mr./Ms:

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 §845, I am [raising, lowering, or affirming] the proposed assessment and [vacating the penalty] as shown on the attached Assessment Conference Report.

Office of Surface Mining regulations at 30 CFR PART 845 establish a point system to evaluate each violation cited in a Notice of Violation (NOV) or Cessation Order (CO). In deciding whether to propose a penalty for a violation cited in an NOV, the permittee's history of previous violations, the seriousness of the violation, and the degree of negligence involved in the violation are considered. If the permittee has abated the violation by the time the proposed assessment is prepared, good faith in complying may also be considered. Under the point system, a penalty is not required when a violation is assigned a total of 30 points or less.

However, in accordance with the regulations under 30 CFR §845.12(c), this office will exercise its discretion to assess a penalty for violations assigned 30 points or less when points assigned under 30 CFR §845.13 to a particular violation reach a certain threshold limit in any one of the following categories: 12 or more points for "History," 21 or more points for "Seriousness," 12 or more points for "Obstruction," and 15 or more points for "Negligence."

The Assessment Conference Report shows the dollar amount of the civil penalty associated with each violation for which the conference was held and reflects changes 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 30 days after the date you receive this letter to:

U.S. Department of the Interior
Office of Hearings and Appeals
801 North Quincy Street
Arlington, VA 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 "Office of Surface Mining" in an amount equal to the total of the revised 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 proposed assessment, you may forfeit your right to a hearing. To assure proper credit of your payment, you must note on your check or money order the violation for which the contested assessment is being made.

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 5 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 a violation, the proposed assessment for that violation will become final and will be due and payable within 30 days from the receipt of this letter. Payments should be made by check or money order payable to the "Office of Surface Mining" and sent to:

Office of Surface Mining
PO Box 979068
St Louis MO 63197-9000

For courier service, send payments to:

U.S. Bank
Government Lockbox 979068
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

To assure 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 (000) 000-0000.

Sincerely,

[Name of Conference Officer]
Assessment Conference Officer

Enclosures

cc: [OSM Field Offices and other applicable Government Offices]

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
WESTERN REGIONAL COORDINATING CENTER
P.O. Box 46667
DENVER, COLORADO 80201-6667

ASSESSMENT CONFERENCE REPORT

Company Name: [Name of Company]

Permit #: 00-00000

Citation: N00-000-000-000

Type of Conference: Telephone

Date of Conference: [Date]

Person(s) in Attendance	Title
[Attendee's Name]	[Attendee's Title]
[Attendee's Name]	[Attendee's Title]

Violation Number	Amount of Assessment as Revised
1 of 1	$000.00

Total: VACATE PENALTY

Approved: _____ _____
(Signature of Conference Officer) (Date)

ASSESSMENT CONFERENCE REPORT
(Continued)

Permittee: [Name of Company]
Permit #: 00-00000
Citation: N00-000-000-000
Violation: 1 of 1

Violation: 1 of 1

1. Nature of Violation: Failure to maintain a diversion.

   (a) Provisions Violated: 30 CFR §816.43(a)(2)(i) and (iii)

   (b) Date(s) for Abatement: 00/00/00 and 00/00/00 (modified to 00/00/00)

   (c) Date Reinspected: 00/00/00

   (d) Date of Termination: 00/00/00

2. Conference	Proposed Assessment	Conference Assessment
(a) History/Previous Violation	00	00
(b) Seriousness		
(1) Probability of Occurrence	00	00
Extent of Damage	00	00
(2) Obstruction to Enforcement	NA	NA
(c) Negligence	00	00
(d) Good Faith	00	00
Total Points:	00	00
Total Amount of Assessment:	$0000.00	$000.00

VACATE PENALTY: The revised penalty assessment of $000.00 is vacated because (1) the assessment is less than 30 points and (2) none of the threshold limits in any one of the categories for "History," "Seriousness," or "Negligence" has been reached.

Permittee: [Name of Company]
Permit #: 00-00000
Citation: N00-000-000-000
Violation: 1 of 1

3. Narrative:

HISTORY (0 points)

The history points for this violation include the appropriate past violations for the entire surface coal mining operation.

PROBABILITY OF OCCURRENCE (0 points)

EXTENT OF ACTUAL OR POTENTIAL DAMAGE (0 points)

NEGLIGENCE (0 points)

GOOD FAITH (0 points)

The violation was not abated at the time the assessment was made. Consequently, good faith points were not considered.

Good faith points are awarded if abatement is achieved as rapidly as possible after notification of the violation by using extraordinary measures. Examples of such measures include initiative, continued effort, use of extra equipment and/or personnel, interrupted coal production, and working beyond normal hours. Rapid compliance means that the abatement occurred as quickly as possible, based on unique circumstances relating to the case, and that abatement was achieved prior to the time for abatement appearing on the NOV or prior to any modified time for abatement as determined by the inspector who wrote the NOV. To award good faith, there must be evidence that extraordinary measures were used in addition to rapid compliance. Applicable assessment guidance further states that good faith points are designed to motivate the operator to achieve compliance after notification of the violation.

EXHIBIT J-2

CONCLUSION OF CONFERENCE

Permittee
Company
Street or P.O. Box
City, State and Zip code

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

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 845, I am affirming the assessment for the above violation as shown on the attached Assessment Conference Report.

The Assessment Conference Report shows the dollar amount of the civil penalty associated with each citation 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 affirmed assessment, you must submit a petition for review within 30 days after the date you receive this letter to:

U.S. Department of the Interior
Office of Hearings and Appeals
801 North Quincy Street
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--OSM" in an amount equal to the total of the affirmed 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 proposed 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 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 a violation, the proposed assessment for that violation will become final and will be due and payable within 30 days from the receipt of this letter. Payments should be made by check or money order payable to "Assessment Office--OSM" and sent to:

Office of Surface Mining
PO Box 979068
St Louis MO 63197-9000

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

Please read this letter carefully. If you have a question that is not answered by this letter, you may call me at (865) 545 4103.

Sincerely,

Conference Officer

Enclosure

cc:

EXHIBIT J-3

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
710 Locust Street, Second Floor
Knoxville, TN 37902

NOV 29 2005

CONCLUSION OF CONFERENCE

Mr. Todd K Manager
company name
company address
Abingdon, VA 24210

Re: Assessment Conference for: company name
Violation No.: 1 of 2 of N05-090-100-003(2)
Permit: 3000

Dear Mr. K :

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 845, I am revising the assessment for the above mentioned violation as shown on the attached Assessment Conference Report.

The Assessment Conference Report shows the dollar amount of the civil penalty associated with each 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.

As you chose to resolve this matter through a Consent Assessment of Civil Penalty (Full Payment) and payment was received, this matter has been settled. If you have any questions which are not answered by this letter, you may call me at (865) 545-4103, ext. 165.

Sincerely,

Ron McDowell

Ron McDowell
Assessment Conference Officer

Enclosure:
Copy of signed Consent Assessment of Civil Penalty (Full Payment)

TAKE PRIDE IN AMERICA

ASSESSMENT CONFERENCE REPORT

Knoxville Field Office

Company Name: company name

Permit No: 3000

Citation No: N05-090-100-003

Type of Conference __ in person x telephone __ letter ___

Conference Started: September 21, 2005 at 9:00AM

Conference Ended: September 21, 2005 at 10:15AM

Persons in Attendance	Title
Todd K	Manager
Ron McDowell	Conference Officer

Amount of Assessment

Violation No:	As Revised
1	$ 1,430.00
2	$ 1,430.00
	$
	$
	$
	$
	$

Approved: Ron McDowell
(Signature of Conference Officer)

Date: NOV 17 2005

ASSESSMENT CONFERENCE REPORT
(Continued)

Company Name: company name

Permit No: 3000

Citation No: N05-090-100-003

Violation 1 of 2

3. Narrative:
(Explanation of changes in assignment of points and information presented at the conference.)

IMPACT: Stream discoloration and sedimentation

HISTORY: No information was submitted to change the assignment of points.

PROBABILITY: Fifteen points, occurred event, were assigned. The company representative produced no information to change the points assessed for this category.
The mine manager agrees the receiving stream was turned a gray color by the discharge from sediment basin 001.

EXTENT: Thirteen points, damage extending outside the permit area, were assessed.
The company representative contends the points assigned should be reduced.
Mine manager contends he conducted his own sampling of discharge and the laboratory analysis showed a suspended solids level of only 24mg/l and not 44mg/l as indicated by the OSM sample. Also, he contends the company actually improved the quality of water to the receiving stream. Prior to mining, the company collected and hauled 23 tons of trash from the creek bed resulting in a more natural streambed and improved quality of flow. **Findings**: Both the OSM stream sample analysis and operator's sample analysis indicate a suspended solids level higher than the receiving stream. Because the basin discharge makes up a significant portion of the receiving stream flow at this point, the elevated level of suspended solids at discharge as indicated by either sample (44mg/l or 24 mg/l vs 5 mg/l upstream) would likely result (and actually did result) in a adverse coloration and water quality impact. Both OSM inspector and operator agree the color change was evident. Also, sediment was was documented observed in the streambed below the basin 001 discharge. Streambed coating would adversely affect aquatic species. The operator's previous efforts to clean trash from receiving stream indicates a concern for improved water quality however this information cannot be considered for a reduction to extent of damage. Assessment for extent of damage remains at thirteen points.

NEGLIGENCE: Twelve points, high negligence, were assessed. The Mine Manager contends the points assigned to this category should be reduced. He contends the suspended solids problem exists because the basin was located and constructed in a creek bottom where alluvial material exists. Also, the basin has internal seeps in the bottom which cause sediments pumped from the mine entry box cut to suspend. He contends the company did not ignore the problem prior to issuance of the violation. The company submitted a permit revision to address the problem. A company representative also checked the condition of in-pond waters each morning, before work began, to evaluate for needed treatments. Mine manager says company realized this permit could not be mined without repeatedly having the same situation occur and resulting in gray water discharges, therefore, active mining has been indefinitely suspended. He further explained that mine activity in the box cut cannot avoid suspended solids laden water which must be pumped to basin 001. Mining has been stopped to avoid repeatedly contaminating the stream and to avoid the resulting enforcement actions. **Findings**: The conference manual guidance allows a lower level of negligence when the operator was actively working to correct the problem when the violation was issued. The information provided above indicates the operator was working to address the situation when the violation was issued. However, information provided by the inspector indicates the permit revision to address impacts to receiving stream was previously ordered by the inspector. Also, inspector indicates the violation was issued because the operator was not diligent in implementing the approved treatment measures after permit revision was approved.

GOOD FAITH: The violation was written on July 14, 2005 with a specified abatement date of August 17,2005 or a period of 34 days. The violation was terminated by OSM on the effective date of July 25, 2005 or a period of eleven days from violation issuance. Therefore, the violation was abated by the company within 32% of the allowed abatement period. In accordance with the OSM Conference Manual, the operator is eligible for a reduction of 7 points for good faith efforts with submission of operator's statement of extraordinary measures taken to abate. Operator submitted the required statement which was received by OSM KFO on October 11, 2005. The OSM issuing inspector agrees with awarding of good faith points.

SETTLEMENT: Telephoned Mine Manager, Todd K on October 24, 2005, to explain conference conclusions, as described above, resulting in a assessement point reduction to 33 and corresponding penalty reduction to $1,430.00. Mr. K was offered and agreed to settle the penalty for violation #1 for this amount.

ASSESSMENT CONFERENCE REPORT
(Continued)

Company Name: company name

Permit No: 300

1. Citation No: N05-090-100-003

Violation 1 of 1

(a) Nature of Violation: Failure to prevent additional contributions of suspended solids to stream flow outside the permit area; basin 001 discharge had colored the receiving stream gray.

(b) Date for Abatement: August 17, 2005 Date Served: July 14, 2005

Date of Termination: July 25, 2005

2. Conference Result	Proposed Assessment	Conference Assessment
(a) History/Prev. Violation	0	0
(b) Seriousness		
(1) Probability of Occurrence	15	15
Extent of Damage	13	13
(2) Obstruction to Enforcement		
(c) Negligence	12	12
(d) Good Faith	0	-7
TOTAL POINTS	40	33
TOTAL AMOUNT ASSESSMENT	$ 2,200.00	1,430.00

ASSESSMENT CONFERENCE REPORT
(Continued)

Company Name: Company name

Permit No: 3000

1. Citation No: N05-090-100-003

Violation 2 of 2

(a) Nature of Violation: Failure to follow the approved plans for underground development waste storage. The operator allowed underground development waste to be hauled off the permit.

(b) Date for Abatement: August 17, 2005 Date Served: July 14, 2005

Date of Termination: July 29, 2005

2. Conference Result	Proposed Assessment	Conference Assessment
(a) History/Prev. Violation	0	0
(b) Seriousness		
(1) Probability of Occurrence	15	15
Extent of Damage	11	8
(2) Obstruction to Enforcement		
(c) Negligence	16	16
(d) Good Faith		-6
TOTAL POINTS	42	33
TOTAL AMOUNT ASSESSMENT	$ 2420.00	$ 1,430.00

ASSESSMENT CONFERENCE REPORT
(Continued)

Company Name: company name

Permit No: 3000

Citation No: N05-090-100-003

Violation 2 of 2

3. Narrative:
(Explanation of changes in assignment of points and information presented at the conference.)

IMPACT: Off Permit disturbance with no environmental controls

HISTORY: This permit has no points assigned for history

PROBABILITY: No information was submitted to change the points assessed for this category. The operator agrees the underground development waste was hauled off the approved permit area.

EXTENT: Operator contends the points assessed for this category should be reduced from 11 points. Operator indicated the underground development waste was only allowed to remain off permit for a total of five days before the material was picked up and hauled back to the permit area. Operator also indicates that during this five day period no rainfall events occurred, therefore, no runoff could have drained from the waste into any receiving stream. The operator produced color photographs of the off permit disturbance showing the material which was being used to construct a farm access road. He also produced a color photograph showing the same affected area after this material was picked up and hauled away showing no waste material remained on the off permit site. **Findings:** Points for this category should be reduced from 11 to 8. Information submitted indicates very little, if any, damage actually resulted from the material being placed off the permit. Material only remained off site for a 5 day period. Information submitted indicates no rainfall events occurred over this period thereby reducing chances for contaminated runoff to reach the receiving stream.

NEGLIGENCE: Operator contends the points assessed for this category should be reduced. He indicates the area permitted for waste dumping was found to have evidence of subsidence after the area was cleared of vegetative growth. The operator believed placing the material in this area would cause problems with drainage flow due to the subsidence and its affects on flow. The operator was not aware taking the material off permit would present a problem. **Findings:** The

above information does not warrant a reduction of the assessed points. Hauling mine waste material off permit to a unpermitted location with no environmental controls is disregarding an obvious high risk of environmental harm.

GOOD FAITH: The violation was written on July 14, 2005 with a specified abatement date of August 17, 2005 or a period of 34 days. The violation was terminated by OSM on the effective date of July 29, 2005 or a period of 15 days from violation issuance. Therefore, the violation was abated by the company within 44% of the allowed abatement period. In accordance with the OSM Conference Manual, the operator is eligible for a reduction of 6 points for good faith efforts with submission of operator's statement of extraordinary measures taken to abate. The operator submitted the required statement which was received by OSM KFO on October 11, 2005. The OSM issuing inspector agrees with awarding of good faith points.

SETTLEMENT: Telephoned Mine Manager, Todd Kiscaden on October 24, 2005 to explain conference conclusions, as described above, resulting in a assessment point reduction to 33 and corresponding penalty reduction to $1,430.00. Mr. Kiscaden was offered and agreed to settle the penalty for violation #2 for this amount.

EXHIBIT J-4

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
710 Locust Street, Second Floor
Knoxville, TN 37902

October 25, 2005

company name
Mr. Todd K Manager

Abdington, VA 24210

Re: Assessment Conference for: company name
Violation Nos. 1 of 2 of N05-090-100-003(2)
Permit: 3000

Dear Mr. K

This confirms our conference of September 21, 2005 and settlement of above referenced citation.

Attached are two copies of a Consent Assessment of Civil Penalty (Full Payment) for signature. The signed agreements should be returned within ten (10) days from receipt of this letter to:

Office of Surface Mining
John J. Duncan Federal Building
710 Locust Street, Second Floor
Knoxville, Tennessee 37902
Attention: Assessment Conference Officer

A check or money order in the amount of $2,860.00 should accompany the signed agreements. Upon receipt of the signed agreements and the full payment, acknowledgment will be made and one copy will be returned to you as receipt of full payment.

If you have any questions, please call me at (865) 545-4103, extension.165.

Sincerely,

Ron McDowell

Ron McDowell
Assessment Conference Officer

Enclosure:
2 copies Consent Assessment of Civil Penalty (Full Payment)

TAKE PRIDE IN AMERICA

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
710 Locust Street, Second Floor
Knoxville, TN 37902

In Re: company name NOV No.: N05-090-100-003(2)

CONSENT ASSESSMENT OF CIVIL PENALTY
(Full Payment)

THIS AGREEMENT is made and entered into by and between _____, ("the permittee") and the Office of Surface Mining Reclamation and Enforcement ("OSM"), U.S. Department of the Interior .

WHEREAS, pursuant to its authority under the Surface Mining Control and Reclamation Act of 1977 ("the Act") and regulations promulgated thereunder, OSM has issued to the Permittee, Notice of Violation (NOV) No.N05-090-100-003(2), charging the Permittee with one or more violations of said Act and regulations at the Permittee's surface coal mining operation in Grundy County, Tennessee, operated under Permit No. 3115; and

WHEREAS OSM has proposed a civil penalty assessment in the amount of **$4,620.00** for said NOV ; and

WHEREAS the parties wish to settle all outstanding issues arising out of the issuance of said and proposed assessment;

NOW, THEREFORE, in consideration of the above premises and the conditions set forth herein, the parties agree as follows:

1. A civil penalty in the amount of **$2,860.00** is hereby assessed for the violation cited in the above referenced NOV. This assessment is now final, and any rights the Permittee may otherwise have had to contest the proposed penalty assessment are expressly waived.

TAKE PRIDE IN AMERICA

2. Receipt of check no. 1925 in the amount of #2,860 is hereby acknowledged in full payment of said penalty assessment (provided any personal check timely clears the financial institution on which it is written).

Company name
Permittee

By: [signature] 30 OCT 05
Signature and Date

TODD K
Name (print or type)

MINE MGR.
Title

OFFICE OF SURFACE MINING

By: Ron McDowell 11-3-05
Signature and Date

RON McDOWELL
Name (print or type name)

Assessment Conference Officer
Title

EXHIBIT K-1

INSPECTION GROUP
ASSESSMENT CONFERENCE CONCLUSION AUDIT REPORT

COMPANY NAME: company name

CITATION #: NOV N05-090-100-003 violations #1 and # 2 of 2

PROPOSED PENALTY $ 4,620.00 REVISED PENALTY 2,860.00

CONFERENCE OFFICER SIGNATURE: Ron McDowell

DATE SUBMITTED FOR REVIEW: October 26, 2005

1. Penalty revisions and/or conference conclusions follow guidelines in the Assessment Conference Officer's Manuals.

2. The file contains sufficient information and documentation to support the justification presented in the Conclusion of Conference Report.

3. Payments, if applicable, were transmitted timely and according to established guidelines.

Comments:

1st Reviewer Concurrence

Dawn Gelli - 11-14-05
(Initials & date)

2nd Reviewer Concurrence

(Initials & date)

Yes	No	
X		Conference scheduling letter was posted at least five days before the conference was held.
X		Conference was held within 60 days of receiving the Conference Request or the end of abatement period.
X		Conference was concluded and approved within 30 days of the conference end date

Reason for marking an item "No":

EXHIBIT K-2

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
WESTERN REGIONAL COORDINATING CENTER
P.O. Box 46667
DENVER, COLORADO 80201-66667

CONFERENCE OFFICER AUDIT REPORT

Date of Review: _____

_____ Company Name	_____ Citation #	_____ Date of Conference
_____ Termination Date	$_____ NOPA	_____ Revised Penalty
$_____ Collected	$_____ Payment Plan	_____ Conference Officer

1. Penalty changes follow guidelines outlined in the Conference Officer's Manual:

Concurrence:	Yes	No	Rater's Concurrence (Initials)
	____	____	_____

Rater's Comments:

2. Documentation presented in the Conference Report justifies a change in the penalty amount:

Concurrence:	Yes	No	Rater's Concurrence (Initials)
	____	____	_____

Rater's Comments: