



U. S. DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
**DIRECTIVES SYSTEM**

Subject Number:

FIN-1

Transmittal Number:

374

Date: 9/4/87

Subject: Conference Officer Operations Manual

Approval:

*John C. Johnston*

Title: Director

1. **PURPOSE.** This directive is to inform all OSMRE employees of the availability of the OSMRE Conference Officers Manual. This manual provides standards, policy and procedures for use in planning, conducting and reviewing assessment conferences for compliance with Part 845--Civil Penalties, Code of Federal Regulations, 30.
2. **DEFINITIONS.** None.
3. **POLICY/PROCEDURES.** The OSMRE Conference Officer Manual was developed to provide OSMRE's Conference Officers, conference reviewers, and conference managers with guidance for use in performing and evaluating all phases of the conferences, conducting conferences, settling cases, preparing conference reports, reviewing and approving conference settlements and reports, and quality control review of conference work.
4. **REPORTING REQUIREMENTS.** See attached appendix.
5. **REFERENCES.** See attached appendix.
6. **EFFECT ON OTHER DOCUMENTS.** Supercedes draft manual dated August 7, 1986.
7. **EFFECTIVE DATE.** Upon issuance.
8. **CONTACT.** Directorate of Finance and Accounting, (202) 343-3062.



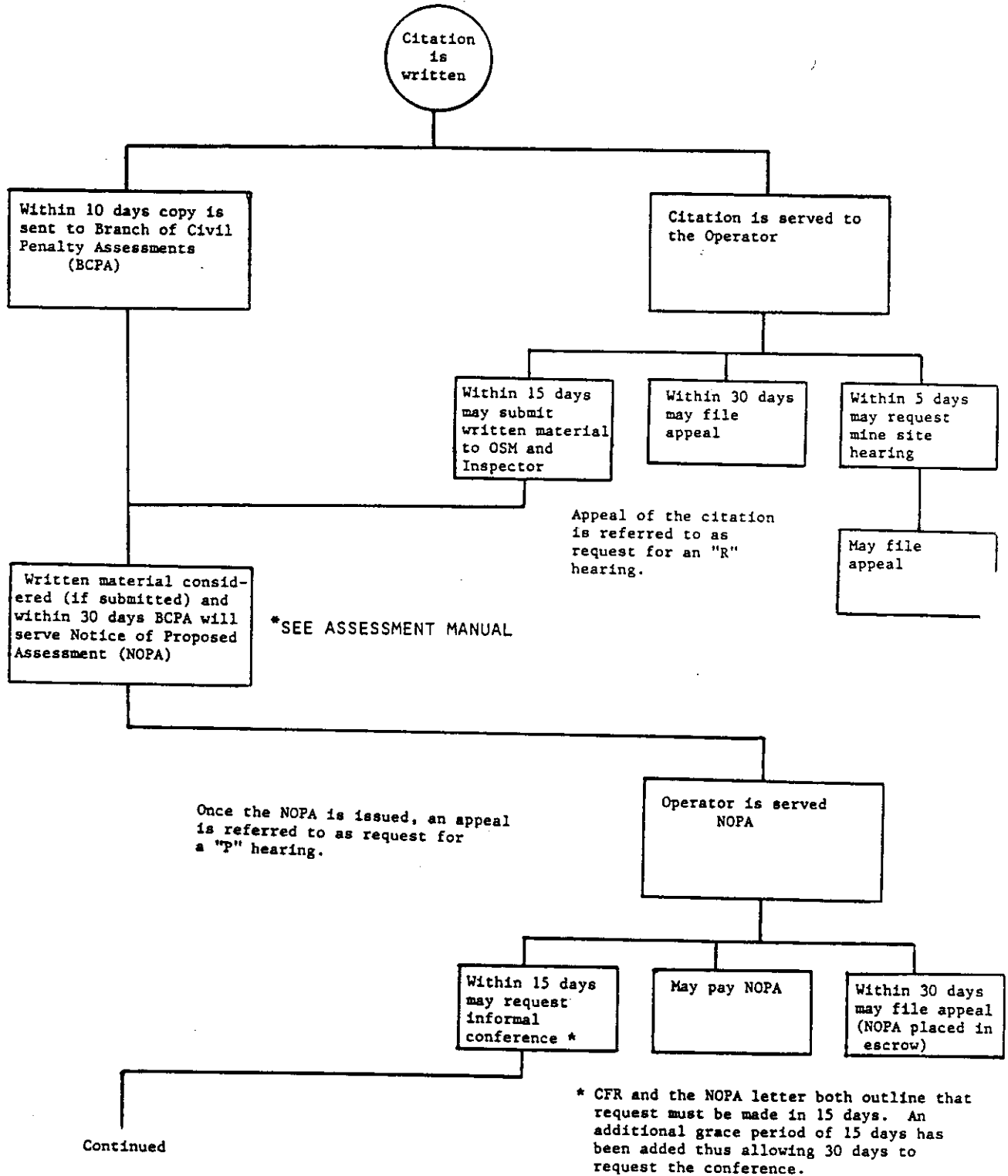
OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT

CONFERENCE OFFICER  
OPERATIONS MANUAL

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TIME GUIDELINES  
 PENALTY ASSESSMENT &  
 INFORMAL CONFERENCES



Continued

If approved copy of NOPA and conference approval letter sent to field

Conference held within 60 days of approval or termination, whichever is later \*\*

\*\* Conference is to be held within 60 days of receipt of the conference approval letter or 60 days from the date of termination, whichever is later

Within 5 days before conference notice is to be posted

Informal conference is held

Within 30 days Conference is concluded, reviewed and approved.

Operator is served Conclusion of Conference

Operator may settle

Within 15 days may file appeal (assessment placed in escrow)

After 30 days final order is sent

## CHAPTER 1.

### INTRODUCTION AND OVERVIEW

This chapter presents general information about the establishment of the Office of Surface Mining and a discussion of the Conference Officer Program.

#### 1.1 General Background

The Senate and House of Representatives of the United States of America in Congress enacted the Act cited as the "Surface Mining Control and Reclamation Act of 1977". With the passage of the Act under Sec 210(a) there was established in the Department of the Interior, the Office of Surface Mining Reclamation and Enforcement (OSMRE). National concern over extensive environmental damage caused by previous coal mining activities led to the passage of the Surface Mining Control and Reclamation Act of 1977.

In the enforcement of the Federal program or Federal lands program, or during Federal enforcement pursuant to section 502 or 521 of the Act, 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 penalty assessment. 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 shall be assessed only after the person charged with a violation has been given an opportunity for a public hearing or other appeal rights. Where the person charged with such a violation fails to avail himself of the opportunity for a hearing or other appeal rights, a civil penalty shall be assessed after it is determined that a violation did occur and the amount of the penalty warranted, and has been issued an order requiring the penalty be paid.

#### 1.2 General Appeal Rights

A. Within thirty (30) days after receiving a citation the permittee may file an application for review and request for hearing under the provisions of 43 CFR Part 4.

B. Within five (5) days of being served a citation the permittee may request a mine site hearing to review or protest the facts of 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 Notice of Proposed Assessment (NOPA) of penalty for the violation, the Operator may request either (1) or (2) below:

(1) Within thirty (30) days request an informal conference to review or protest the proposed penalty amount. This conference is to discuss the amount of the penalty and not the facts of the violation. The person requesting the conference need not pay the proposed amount into escrow to qualify for the informal conference.

(2) If a conference is not requested within thirty (30) days, the operator, by placing the proposed amount of penalty in escrow, may request a formal hearing to review or protest the amount of the penalty, and/or the facts of the violation, if not already requested.

D. After the informal conference and receipt of the Conclusion of Conference Report, within fifteen (15) days and by placing the amount of penalty in escrow, the operator may request a formal hearing to review or protest the penalty amount and/or the facts of the violation, if not already requested.

The Act, clarified and amplified by the Code of Federal Regulations, allows coal permittees the opportunity to have a public hearing when they are issued violations 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 conferences to be conducted after a permittee has been issued a NOPA. The Conference Officer position was established in order to provide trained personnel to conduct these informal conferences. This manual is written to delineate the procedures and guidelines for the Conference Officers, and to depict the requirements in conducting informal conferences.

## CHAPTER 2

### CONFERENCE PROCEDURES

The procedures outlined in this chapter apply to informal assessment conferences. The responsibilities and activities of Conference Officers are as delineated and generally follow the procedure depicted in the flow-chart shown under Table C.

#### 2.1 Purpose of Conferences

The conference allows the permittee or operator 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. It is an opportunity for the permittee to bring to light information which was not available at the time of proposed assessment, or to offer extenuating circumstances which may have a bearing on the case. After presentation of facts the Conference Officer, upon obtaining concurrence from the reviewer, renders a decision and a final assessment. Settlement 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.

The good faith criterion is considered only after a violation has been abated and normally is not considered by the assessor. The conference provides the permittee the opportunity to document whether good faith points can possibly be awarded. In addition to good faith, the conference provides the permittee an opportunity to present any facts having a bearing on any of the elements of the proposed assessment.

The conference is not a forum for discussing whether the violation occurred--it must be accepted that enforcement actions taken in the field are correct. Where the permittee asserts facts which would indicate the violation was written in error, the Conference Officer should bring these facts to the attention of the Field Office Director so that corrective action may be taken if appropriate. Where a dispute remains, the proper forum for discussing the enforcement action is the hearing procedure pursuant to section 525 of the Act.

#### 2.2 Responsibilities of the Conference Officer

As 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. This requires that the Conference Officer be knowledgeable in the application of laws pertaining to the coal mining industry.

The Conference Officer must appear as 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 be considered in all endeavors. The permittees should be taught the requirements of the Act but, more importantly, become endowed with the spirit of cooperation in endeavoring to fulfill the provisions of the Act on a voluntary basis.

Negotiations are to be conducted rationally in order to settle the issues involved in the penalty assessment process. The Conference Officer must possess the ability to listen, perceive, and evaluate information to arrive at a final conclusion based on fair, impartial decisions rendered by facts rather than impressions or preconceived concepts. 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.

The Conference Officer must construct and maintain a complete file for each conference (see Table E). It is essential that procedures and efforts be fully documented, as well as the decision making process used in rendering the final assessment. A log or history sheet (similar to Exhibit 17) shall 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 case assignment. Also in the event of transfer or other monitoring of the case it will allow continuing action to transpire without unnecessary duplication of effort. Typical forms and documents used by the Conference Officers are shown in Table D. The Branch of Civil Penalty Assessments (BCPA) will send pertinent documents to the Conference Officer so that a file can be established and maintained. In addition to the documents received from BCPA, the enforcement documents pertaining to the citation will be secured from the Field Office and will be made a part of the file. The Conference Officer will send a Conclusion of Conference letter and an Assessment Conference Report to the permittee after the conference is concluded. The Conference Officer must also send copies of the Conclusion of Conference Letter and the Assessment Conference Report to the BCPA. Reports and correspondence prepared by the Conference Officer will be retained in the case file.

There will be a person on the Conference Officer's staff designated as responsible for reviewing the Conference Officer's work for accuracy and adherence to policy.

The Conference Officer will prepare a report documenting the

NOV or CO numbers, the proposed assessments, the original point totals, modified assessments, and the modified point totals.

### 2.3 Scope of the Conference

The Conference Officer has authority to affirm, raise or lower the penalty as specified in the Delegation of Authority Directive:

OPM 5-11, #250, dated 7/17/85, paragraph 3c(19)(p): "The Conference Officer has authority to raise or lower the proposed civil penalty. This authority includes but is not limited to modification of an assessment in excess of 25 percent and \$500 of the original assessment."

### 2.4 Scheduling the Conference

The permittee must request a conference in writing within thirty (30) days of the receipt of the assessment package (Notice of Proposed Assessment). A form for requesting a conference will be included in every package where a violation warrants a civil penalty. Requests for conference will be sent to:

Branch of Civil Penalty Assessments  
Office of Surface Mining  
Department of the Interior  
Washington, D.C. 20240

After the conference is approved, a copy of the conference approval is forwarded to the appropriate Conference Officer, who is responsible to schedule the conference.

The 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. Any conference that is not concluded within sixty (60) days of the receipt of the approval letter must be reported (see Exhibit 16). The permittee should be given an opportunity to have the conference scheduled at a convenient date and place. As the conference may be attended by the public, the conference site will be a location available for public access.

A notice of the conference, pursuant to 30 CFR 845.18, must be posted at the OSMRE Field or area office having jurisdiction over the mine at least five (5) days prior to the conference. This notice is a copy of the conference scheduling letter (see Exhibit 1). The public notice requirements and the public participation requirements, pursuant to 30 CFR 845.18(b)(2), must be observed. If, due to budget constraints on travel, conferences are held by telephone or by letter, the public will be included in the following ways:

- (1) For telephone conferences, conference calls will be arranged upon advance request of the public;

mail from the permittee will be available, upon request from the public, the day on which the conference is scheduled.

The purpose of the conference is to provide the permittee a forum for discussing the assessment. The permittee is contacted either by phone and by regular mail regarding the time and place for the conference, or by certified mail if prior phone contact was not possible (see Exhibit 1). If the permittee cannot make the scheduled appointment, 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 letter (see Exhibit 3) concluding the conference to allow the permittee the chance to request a hearing, and to finalize the case for collection purposes if the permittee does not request a hearing.

## 2.5 Preparing for the Conference

In preparing and reviewing the assessment file, the Conference Officer shall make certain that all basic documents are included in the file. A list of documents and a sample of each follow:

### A. Assessment Package

1. Conference Request Approval
2. 1st page of letter: Notice of Proposed Penalty Assessment (NOPA)
3. Completed Conference Request Form
4. NOPA
5. Assessment Worksheet(s)
6. Assessment Explanation(s)

### B. Enforcement Package

1. Copy of citation to include continuation page(s)
2. Inspection Report(s)
3. Inspection Statement(s)
4. Log sheet (if applicable)
5. Modification(s) (if applicable)
6. Termination or Vacation - include applicable inspection report(s) and statement(s)

Is this the operator or person requesting the conference (See page 3)

*Permit 88-A03*



United States Department of the Interior

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

FEB 13 1987

Mr. Lloyd Smith  
Manager  
Anyole Coal Company  
P.O. Box 000  
Jellico, TN 37752

Is the citation number consistent throughout this package

RECEIVED

'87 FEB 19 10:39

OSM-ANDREWS  
FIELD OFFICE

The conference must be held within 60 days of date received or the termination date of the citation whichever is later

CONFERENCE REQUEST APPROVAL

RE: N86-91-000-1(1)

This is in response to your letter(s) dated February 2, 1987 in which you requested a conference. Your request has been granted and is being forwarded to the appropriate OSM office for assignment. A Conference Officer will contact you to schedule the conference. If you have any questions or need assistance, please call the appropriate Conference Officer listed on the attachment to this letter.

Note that it is specified contact will be made to schedule the conference

Sincerely,

Robert B. Campbell, Chief  
Branch of Civil Penalty Assessments

Attachment

This letter is sent after the Branch of Civil Penalty Assessments (BCPA) receives a copy of the citation and has completed the Notice of Proposed Assessment (NOPA). With this letter and the NOPA (pages 4 & 5), there is a blank request for conference form (see page 3). If the operator requests a conference, this is returned, evaluated and acceptance or denial is given.



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

January 28, 1987

Anyole Coal Company  
 P.O. Box  
 Jellico, TN. 37762

RE: CIVIL PENALTIES FOR VIOLATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, (SMCRA), 30 U.S.C. 1201 et seq.

Enclosed is a notice of proposed civil penalty assessment with respect to certain violations for which a notice of violation (NOV) or a cessation order (CO) was issued to you.

Please read this letter very carefully. It contains information concerning requirements for payment of civil penalty assessments which must be followed to avoid additional cost, and requirements for obtaining informal and formal review of the penalty. If you have any questions, you may call the Branch of Civil Penalty Assessments at (202) 653-2904.

I. PAYMENT PROCEDURES

Unless you request an assessment conference or administrative hearing in accordance with the instructions set forth below, the proposed civil penalty assessment will become a Final Order within 30 days of receipt of this letter. Payment must be received by the Office of Surface Mining (OSM), Branch of Collections, within 30 days after the assessment becomes a Final Order or the debt will be considered delinquent and the following sequence of charges will be applied to your account:

- A. Interest calculated at the current Treasury rate will be assessed from the day when payment of the civil penalty was first due.
- B. Administrative costs incurred in the processing and handling of the delinquent debt, such as the cost of referring the account to a debt collection company.
- C. If any portion of the civil penalty remains unpaid 90 days after the assessment is first due, you will be subject to a 6 percent penalty 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.

This form is sent blank to the operator and if a conference is desired the form is completed and returned to BCPA.

OSM 723-4  
Revised 2-10-84

FEB 2 1987

(Date)

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

Dear Sirs:

Pursuant to 30 CFR §845.18, I request a conference to review  
the proposed assessment for violations of Notice of Violation(s)

# 86-91-000-1 and /or Cessation Order(s) #

My telephone number is (615) 555-7225

555-4674

Telephone number of the  
requestor

Lloyd Smith  
(Signature)

LLOYD SMITH  
(Name and Title)

Name and title of the  
person requesting conference

MGR.

ANYOLE Coal Co  
(Name of Permittee or Operator)

P.O. Box 000 FELICO TN-37762  
(Address of Permittee or Operator)

Mailing address of the  
requestor

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

15 day grace period has been  
added thus allowing 30 days  
to request conference

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 OSM field office that has jurisdiction over the mine.  
Any person has the right to participate in the conference.

This re-emphasizes the  
requirement for posting

Anyole Coal Company  
January 28, 1987

Company name and date of initial letter

OSM 723-5  
Revised 7/10/84

Page 1 of 1

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

NOTICE OF PROPOSED ASSESSMENT

Notice of Violation # 86-91-000-1

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

NOV received: 12/18/86

<u>Violation No.</u>	<u>Amount of Proposed Assessment</u>	
<u>1</u> of <u>1</u>	<u>\$ 1,600.00</u>	← Does this amount agree with page 5
<u>    </u> of <u>    </u>	<u>                    </u>	
<u>    </u> of <u>    </u>	<u>                    </u>	
<u>    </u> of <u>    </u>	<u>                    </u>	
<u>    </u> of <u>    </u>	<u>                    </u>	
<u>    </u> of <u>    </u>	<u>                    </u>	
<u>    </u> of <u>    </u>	<u>                    </u>	
<u>    </u> of <u>    </u>	<u>                    </u>	
<b>Total Proposed Assessment</b>	<b>\$ <u>1,600.00</u></b>	← Is the total correct

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

Assessor's identifying number-  
In case of questions or problems the  
person making the assessment can be  
contacted.  
Page 1 of 1

34

NOV # 86-91-000-1

CO # \_\_\_\_\_

PERMIT # 88-A03

Name of Company ANYOLE COAL COMPANY

Violation # 1 of 1 POINTS

1. History of previous violations 0

2. Seriousness (either A or B)

A. (1) Probability of occurrence 15

(2) Extent of potential or actual damage 9

B. Obstruction to enforcement \_\_\_\_\_

Total Seriousness 24

3. Negligence 12

4. Good Faith (Will be considered after complete information is received) —

TOTAL POINTS 36

ASSESSMENT \$ 1600

Violation # \_\_\_\_\_ of \_\_\_\_\_ POINTS

1. History of previous violations \_\_\_\_\_

2. Seriousness (either A or B)

A. (1) Probability of occurrence \_\_\_\_\_

(2) Extent of potential or actual damage \_\_\_\_\_

B. Obstruction to enforcement \_\_\_\_\_

Total Seriousness \_\_\_\_\_

3. Negligence \_\_\_\_\_

4. Good Faith (Will be considered after complete information is received) \_\_\_\_\_

TOTAL POINTS \_\_\_\_\_

ASSESSMENT \$ \_\_\_\_\_

Are these points in line with assessment guidelines

Is the mathematical calculation correct and does the point count correspond to the assessed dollar amount

This page is not sent to the operator but is included in the assessment package sent to the Conference Officer. Evaluation should be made to see if the assessment package and this rationale corresponds with the inspector's statement(s) and is in line with general assessment guidelines.

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

Page 1 of 1

Assessment Explanation

34

NOV # 86-91-000-1

CO # \_\_\_\_\_

Name of Company ANYOLE COAL COMPANY

Violation # 1 of 1

History of previous violations:

Seriousness: (either A or B)

A.

(1) Probability of occurrence: 15

WATER POLLUTION HAS OCCURRED. OPERATOR HAS NOT MAINTAINED DISCHARGE OF SEDIMENT BASIN. DISCHARGE HAD A PH OF 3.73. UPSTREAM SAMPLE WAS 6.89 PH, DOWNSTREAM WAS 6.60 PH

(2) Extent of actual or potential damage: 9

DAMAGE EXTENDS OFF PERMIT IN THE FORM OF WATER POLLUTION. PH OF STREAM WAS LOWERED.


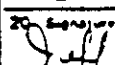
Do the points correspond to those reflected on page 5

B. Obstruction to enforcement:

Negligence: ORDINARY NEGLIGENCE 12

Good Faith: WILL BE CONSIDERED AFTER COMPLETE INFORMATION IS RECEIVED

This is the front page of the citation. Careful review should be made to ascertain that the correct organization is identified, proper service has been executed, and any other discrepancy that might be uncovered.

U.S. DEPARTMENT OF THE INTERIOR Office of Surface Mining Reclamation and Enforcement <b>NOTICE OF VIOLATION</b> Permanent Regulatory Procedures		1. Notice of Violation Number 86-091-000-001 TV 1	
2. Name <input checked="" type="checkbox"/> Permittee <input type="checkbox"/> No Permit ANYOLE COAL COMPANY		Originating Office Address OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828	
3. Mailing Address P.O. Box 000, Jellico, TENN. 37762		Telephone Number (615) 632-1718	
4. Name of Mine <input type="checkbox"/> Surface <input checked="" type="checkbox"/> Other (Specify) MORE Tipple		5. Telephone Number (615) 555-7225	
6. County CAMPBELL		7. State TENNESSEE	
7. Operator's Name (if other than permittee) SAME AS ABOVE		8. Date of Inspection DECEMBER 10, 1986	
8. Mailing Address SAME AS ABOVE		9. Time of Inspection From 12:10 To 12:45	
11. State Permit Number 88-A03	12. NPDES Number TN005555	13. MSHA ID Number 40-00000	14. OSM Mine Number
<p>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.</p> <p>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.</p> <p>THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS NOTICE <input checked="" type="checkbox"/> DOES NOT REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you <input checked="" type="checkbox"/> are not entitled to an informal public hearing on request, within 30 days after service of this notice (30 CFR 843.15).</p> <p>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.</p>			
<b>IMPORTANT—Please Read Information on the Back of this Page</b>			
15. Print Name of Person Served ANYOLE COAL COMPANY		18. Date of Service 12-10-86 HAND-SERVED	
16. Print Title of Person Served 1107 D. SMITH, MANAGER		19. Print Name of Authorized Representative JEFF	
17. Signature of Person Served 		20. Signature of Authorized Representative 	
		ID Number 000	

Data should be cross-checked against that shown on the Assessment Package

Verify that service was executed and citation is valid

Note the name of the inspector in case questions arise

This is the second page of the citation. A page is made for each separate violation within the citation. The information should be cross-checked against the data in the Assessment package to assure the two are consistent.

U.S. DEPARTMENT OF THE INTERIOR Office of Surface Mining Reclamation and Enforcement		MON. NO. 86-091-000-401 Violation Number 1
NOTICE OF VIOLATION (CONTINUATION)		
NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION		
FAILURE TO MEET EFFLUENT LIMITATIONS FOR WATER DISCHARGES FROM AREAS DISTURBED BY SURFACE MINING ACTIVITIES		←
PROVISION(S) OF THE REGULATIONS, ACT OR PERMIT VIOLATED		
SEC. 816.42 OF 30 CFR AND NPDES PERMIT # TN 0052451		←
PORTION OF THE OPERATION TO WHICH NOTICE APPLIES		
SEDIMENT BASIN 001		←
CORRECTIVE ACTION REQUIRED (including Interim Steps, if Any)		
TREAT THE WATER IN BASIN 001 AS NECESSARY IN ORDER TO ACHIEVE COMPLIANCE WITH ALL APPLICABLE EFFLUENT LIMITATIONS		←
TIME FOR ABATEMENT (including Time for Interim Steps, if Any)		
FRIDAY, December 19, 1986 AT 10:00 AM		←

What was the violation

What provision was violated

What portion or extent does the violation cover

What remedial action is required

What period of time was allowed for abatement

This is the inspector's verbal report of what occurred. Look for the who, what, where, when and how much. Read the report and read even in between the lines to determine the extent of damage or potential damage. Evaluate this report against the Assessment package and the other documents within the Enforcement package.

**INSPECTION REPORT**

Page 1 of 2

**Permittee:**

Anyole Coal Company  
P. O. Box  
Jellico, TN 37762

**County**

Campbell

**Operator:**

**Permit No.:**

88-A03

**Date of Inspection:**

12/10/86

**Type of Inspection:**

Partial

**Inspector:**

Jeff

**Action Taken:**

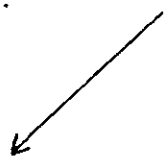
Issued NOV 86-091-000-001  
containing one violation for  
failure to meet effluent  
limitations

**Discussion:**

A partial inspection was completed on this site on 12/10/86. The permittee was represented on site during this inspection.

Mining occurred within permit boundaries. A permit sign is present as required. Diversions are stable and function as designed. All three basin embankments are stable and well vegetated. Haul roads are well maintained. All three basins (001, 002, and 003) were discharging during this inspection. Field tests revealed that basin discharges from 002 and 003 were in compliance. Discharge from basin 001 was field tested and found to exceed effluent limitations for pH. Samples were collected and taken to a lab for analysis. Laboratory analysis indicated that basin 001 was discharging water with a pH of 3.73. This discharge resulted in the issuance of Notice of Violation No. 86-91-000-001 containing one violation for failure to meet effluent limitations. Laboratory analysis from basin 001 is

What are the inspector's comments about the violation



This is a continuation of the inspector's report. Look for discrepancies in comments versus assessments.

Page 2 of 2

Permittee Anyole Coal Company

Permit No. 88-A03

summarized as follows:

	<u>pH</u>	<u>Acidity</u>	<u>Alkalinity</u>
Basin 001 discharge	3.73	99.84	0
Basin 001 upstream	6.89	6.12	12.94
Basin 001 downstream	6.60	7.08	12.94

At this point the inspection concluded.

Service of NOV No. 86-091-000-001 was effective on 12/10/86 at the tipple facility in Morley. Present to accept service was Lloyd Smith, tipple manager

Mr. Lloyd Smith was informed about the issuance of this NOV. This discussion included the nature of the violation, the abatement measures, the basin involved, and the abatement time.

Performance standards not indicated as in compliance are summarized as follows:

25F: Effluent violation addressed in NOV 86-091-000-001.

Item 28 is not in compliance as evidenced by NOV 86-091-000-001.

This is the inspector's statement and used by the Assessor's to determine the level of assessment within the various categories.

11/13/06

NOV/CO # NOV 86-091-000-001  
Violation # 1 of 1

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

← event or obstruction ?

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

The event has happened. Discharge from basin 001 was out of compliance for p H. BASIN 001 discharge had a pH of 3.73.

← probability of occurrence

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? Damage does extend off the permit area.

The damage to the receiving stream is slight. Lab analysis of impacts to the receiving stream is as follows: upstream pH 6.89, downstream pH 6.60, Acidity upstream/downstream was unchanged, and alkalinity upstream was 10.95 dropping to 9.95 on the downstream.

← what was the extent

4. How much damage might have occurred if the violation had not been discovered by an O&N inspector? Describe this potential damage. Would the damage extend off the permit area? Damage associated with this type of violation (effluent limits) invariably occurs off the permit area. The basins have been in place quite some time, no previous effluent violations have been documented, and the basins only discharge during rainfall events. It is doubtful that off-site damage will get any worse than that documented in this violation.

(B). Obstruction to Enforcement Violations (answer for obstruction violations only, such as violations concerning recordkeeping, monitoring, plans, and certifications).  
5. Describe how violation of this regulation actually obstructed enforcement by O&N 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 site.

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

Operator usually treats the two basins (001 and 003) on this area that have pH problems prior to rainfall events which would result in basin discharge. However, in this event the operator apparently did not exercise reasonable care as basin 001 was discharging and was out of compliance.

← negligence

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

9. Was the operator in violation of a specific permit condition? Did the operator have any prior warnings of violation by the State or by O&N concerning this violation? If so, give the dates and the type of warnings.

← prior warnings ?

Good Faith

10. In order to exercise good faith for compliance with an NOV or CO, an operator must take extraordinary measures to comply as rapidly as possible. The violation was not due to the time set for abatement. If you think this applies, describe how rapidly the operator acted and what extraordinary measures the operator took.

11/13/06

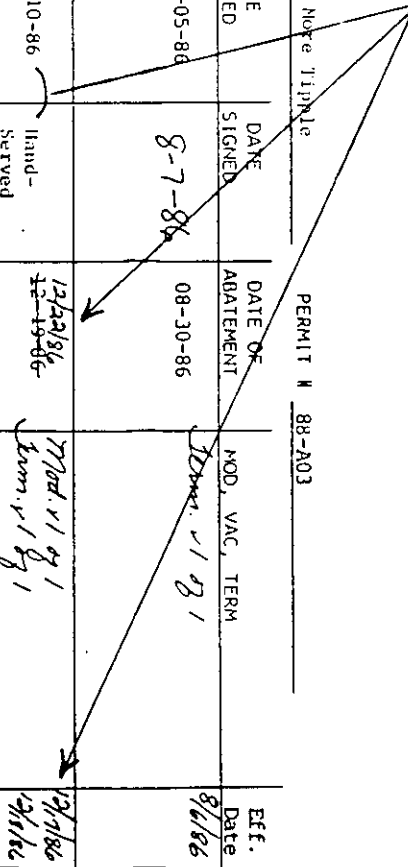
Jell #000

This is a log sheet used by some enforcement offices to monitor citations. A form of this type can be extremely useful in identifying the number of modifications and also the dates involved. If this type of document is not available, other means have to be developed to verify service date, abatement dates after modifications and etc.

NOV #	INSPECTOR'S NAME	DATE MAILED	DATE SIGNED	DATE OF ABATEMENT	MOD, VAC, TERM	EFF. DATE	CO ISSUED
86-091-001-006	Doug	08-05-86	8-7-86	08-30-86	Term. 11/23/86	8/6/86	
86-091-000-001	Jeff	12-10-86	Hand-Served	12/22/86 12-19-86	Mod. 11/23/86 Term. 11/23/86	12/1/86 12/1/86	

COMPANY NAME Anyole Coal Company, Note Triple PERMIT # 88-203

Do the dates and actions correspond to the citation and assessment package



This is a modification of a citation. It should be carefully reviewed to see if the original violation was amended and whether the assessment should also be amended.

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

1 Name <b>ANYOLE COAL COMPANY</b> <input checked="" type="checkbox"/> Permittee No Permit		Originating Office Address <b>OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828</b>	
2 Mailing Address <b>P.O. Box 000, Jellico, Tennessee 37762</b>			
3 Name of Mine <b>MORE Tipple</b>		Surface <input type="checkbox"/> Underground <input type="checkbox"/>	<input checked="" type="checkbox"/> Other (Specify) <b>Tipple</b>
4 Telephone Number <b>(615) 555-7225</b>	5 County <b>Campbell</b>	State <b>TENNESSEE</b>	Telephone Number <b>(615) 632-1718</b>
6 Operator's Name		8 Date of Inspection <b>December 17, 1986</b>	
7 Mailing Address		9 Time of Inspection From <b>11:15</b> <sup>AM</sup> To <b>11:30</b> <sup>PM</sup>	
10 State Permit Number <b>8-A03</b>	11 NPDES Number <b>TN005555</b>	12 MSHA ID Number <b>40-00000</b>	13 OSM Mine Number

**ACTIONS TAKEN**

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

14 Notice of Violation Number <b>86-091-000-001</b>	Dated <b>12/10/86</b>	15 Cessation Order Number <b>- - -</b>	Dated
--	--------------------------	---	-------

16 VIOLATION 1 OF 1 IS MODIFIED (Describe Action and Justify)  
**ABATEMENT DATE IS EXTENDED TO 10:00 AM ON MONDAY DEC. 22, 1986. PERMITTEE/OPERATOR REQUESTED THE EXTENSION IN ORDER TO TRY ADDITIONAL TREATMENT METHODS. SITE INSPECTION INDICATED THAT THE BASIN 001 HAD BEEN TREATED WITH AGRICULTURAL LIME WITH LIMITED SUCCESS. THE BASIN PH HAD BEEN RAISED A FULL PH UNIT FROM 3.7 TO APPROXIMATELY 4.7. IN-FLOW INTO THE BASIN HAD BEEN TREATED AND WAS IN COMPLIANCE. AS THE PERMITTEE/OPERATOR IS MAKING "GOOD FAITH" EFFORT TO ABATE, THE EXTENSION IS GRANTED.**

17 VIOLATION \_\_\_\_\_ OF \_\_\_\_\_ IS MODIFIED (Describe Action and Justify)

18 VIOLATION \_\_\_\_\_ OF \_\_\_\_\_ IS MODIFIED (Describe Action and Justify)

19 Print Name of Authorized Representative <b>JEFF</b>	Identification Number <b>000</b>
20 Signature of Authorized Representative <i>Jeff</i>	Effective Date <b>12/17/86</b>

changes the abatement date

Note the good faith comment and also the consistent effort

**12/23/86** HAND SERVED **12/18/86** *J.*

This is the termination or vacation notice whichever is applicable. Document should be reviewed for statements and dates. Only if a violation has been satisfactorily resolved is settlement possible.

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 <b>ANYOLE COAL COMPANY</b>		<input checked="" type="checkbox"/> Permittee <input type="checkbox"/> No Permit	
2. Mailing Address <b>P.O. Box 000, Jellico, Tennessee 37622</b>		Originating Office Address <b>OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828</b>	
3. Name of Mine <b>MORE TIPPLE</b>		<input type="checkbox"/> Surface <input checked="" type="checkbox"/> Other (Specify) <b>Tipple</b> <input type="checkbox"/> Underground	
4. Telephone Number <b>(615) 784-7225</b>	5. County <b>Campbell</b>	State <b>TENNESSEE</b>	Telephone Number <b>(615) 632-1718</b>
6. Operator's Name		8. Date of Inspection <b>December 18, 1986</b>	
7. Mailing Address		9. Time of Inspection From <b>11:35<sup>am</sup></b> To <b>11:55<sup>pm</sup></b>	
10. State Permit Number <b>88-AC3</b>	11. NPDES Number <b>TN005555</b>	12. MSHA ID Number <b>40-00000</b>	13. OSM Mine Number
ACTIONS TAKEN			
Authority: Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201) the following action is taken:			
14. Notice of Violation Number <b>86-091-000-001</b>	Dated <b>12/10/86</b>	15. Cessation Order Number ---	Dated
16. VIOLATION <u>1</u> OF <u>1</u> IS <input checked="" type="checkbox"/> Terminated <input type="checkbox"/> Vacated		for the Following Reasons:	
<p>Permittee/operator has performed abatement measures. Basin 001 has been successfully treated and is in compliance with effluent limitations.</p>			
17. VIOLATION _____ OF _____ IS <input type="checkbox"/> Terminated <input type="checkbox"/> Vacated		for the Following Reasons:	
18. VIOLATION _____ OF _____ IS <input type="checkbox"/> Terminated <input type="checkbox"/> Vacated		for the Following Reasons:	
19. Print Name of Authorized Representative <b>J.P.F.</b>		Identification Number <b>000</b>	
20. Signature of Authorized Representative <i>J.P.F.</i>		Effective Date <b>Dec. 18, 1986</b>	
12/23/86		HAND SERVED 12/18/86	

Termination or vacation ?

This is another inspector's report and not always will be included or made a part of the package. The comments can be most helpful in determining the overall effort and cooperation of the operator in resolving the situation.

**INSPECTION REPORT**

**Permittee:** Anyole Coal Company  
P. O. Box 000  
Jellico, TN 37762

**County** Campbell

**Operator:**

**Permit No.:** 88-A03

**Date of Inspection:** December 17 and 18, 1986

**Type of Inspection:** NOV Follow-up

**Inspector:** Jeff *g*

**Action Taken:** Modified NOV 86-091-000-001, violation 1 of 1 for effluent limits to extend abatement date from 12/19/86 to 12/22/86. Terminated NOV 86-091-000-001 violation 1 of 1 on 12/18/86

**Discussion:**

A follow-up inspection was conducted on this tipple site on 12/17/86 and 12/18/86. The permittee was represented on site during these inspections by Mr. Lloyd Smith

On 12/10/86 basin 001 was found to be discharging water with a pH below minimum effluent limitations. This resulted in the issuance of NOV 86-091-000-001. Abatement date was initially set for 10:00 a.m. on 12/19/86. The initial NOV follow-up inspection was conducted on 12/17/86. This inspection revealed that basin 001 had been treated with agricultural lime with limited success. The basin pH had increased from approximately 3.7 to 4.7. In-flow into the basin was being treated and was in compliance. At this point the permittee requested additional time be granted in order to try a different treatment method and achieve compliance with effluent limits. As the permittee was making a "good faith" effort to comply, additional days was granted making the new abatement date 12/22/86. This modification was hand-served on 12/18/86 at which time it was determined that basin 001 had been successfully treated and was in compliance with effluent limitations. As a result, violation 1 of 1 in NOV 86-091-000-001 was terminated. A copy of the termination was hand served to Mr. Lloyd Smith at the completion of the follow-up inspection.

again comments on good faith efforts and consistency of effort. 1st attempt did not resolve so an alternate method was employed

Missing documents will be secured from the Assessment Office, the Field Office or originating office of the missing document. Any modifications, terminations and other relevant material should be added to the file. It is important that the Conference Officer review the file materials, the inspector's report and statement, and the follow-up inspection report. The Conference Officer should review the file before conference so that questionable enforcement actions can be resolved through discussions with the inspector, the inspector's supervisor, the Conference Officer's supervisor, the Solicitor or any other source that might resolve the situation.

In addition, the Conference Officer shall compare the Inspector's Report and Inspector's Statement with the Assessment Explanation in order to determine if documents are in agreement or if there are questionable aspects. Other offices within OSMRE may be contacted if greater clarification is needed. The Conference Officer will also compare the date(s) for abatement, along with any modification, to determine if any good faith points may be awarded. If good faith points are available, the operator may be contacted about extraordinary measures and documentation of extra manpower, equipment and costs incurred to abate the violation(s) rapidly.

Following this analysis, the Conference Officer discusses with the reviewer a proposal for any revised assessment. The Conference Officer discusses any discrepancies in the documents and the results of inquiries about the case from other offices within OSMRE. The reviewer may suggest other areas or alternate approaches that need further analysis and questions that may be pursued during the conference.

Following are fictional documents relating to "Anyole Coal Company" and suggestions for pre-conference analysis that may be conducted.

The assessment for Anyole Coal Company - NOV 86-091-001, contains no history points.

The Probability of Occurrence for this violation was assessed at 15 points, the highest possible number of points within the category. On the following pages, the assessment worksheet and assessment explanation are displayed; they should be compared with the inspector's statement and inspection report on the pages the follow.

Assessor's identifying number-  
In case of questions or problems the  
person making the assessment can be

CSM 723-6  
Revised 09/17/79

Page 1 of 1

Assessment Worksheet  
(See Part 723)

34 ←

NOV # 86-91-000-1

CO # \_\_\_\_\_

PERMIT # 58-A03

Name of Company ANYOLE COAL COMPANY

Violation # 1 of 1 POINTS

1. History of previous violations		<u>0</u>
2. Seriousness (either A or B)		
A. (1) Probability of occurrence	<u>15</u>	
(2) Extent of potential or actual damage	<u>9</u>	
B. Obstruction to enforcement	_____	
Total Seriousness		<u>24</u>
3. Negligence		<u>12</u>
4. Good Faith (Will be considered after complete information is received)		<u>—</u>

Are these points in line with assessment guidelines

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

Page 1 of 1

Assessment Explanation

34

NOV # 86-91-000-1

CO # \_\_\_\_\_

Name of Company ANYOLE COAL COMPANY

Violation # 1 of 1

History of previous violations:

Seriousness: (either A or B)

A. (1) Probability of occurrence: 15

WATER POLLUTION HAS OCCURRED. OPERATOR HAS NOT MAINTAINED DISCHARGE OF SEDIMENT BASIN. DISCHARGE HAD A PH OF 3.73. UPSTREAM SAMPLE WAS 6.89 PH, DOWNSTREAM WAS 6.60 PH

(2) Extent of actual or potential damage: 9

DAMAGE EXTENDS OFF PERMIT IN THE FORM OF WATER POLLUTION. PH OF STREAM WAS LOWERED.

INSPECTION REPORT

Permittee:

Anyole Coal Company  
P. O. Box: NOV/CO # NOV 86-091-000-001  
Jellico, TN Violation # 1 of 1

INSPECTOR'S STATEMENT:

(a). Event Violations (go to (b.) if this is an obstruction or 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

← event or obstruction ?

2. If the event has happened, describe it. If it has not happened, what would cause it to happen and how likely is that? (For example, if there is an area for which no sediment control is provided, has runoff from that area reached a stream? If it hasn't reached a stream, what would cause it to get there and how likely is that to happen?)  
The event has happened. Discharge from basin 001 was out of compliance for p H. Basin 001 discharge has a pH of 3.73.

← probability of occurrence

Action Taken:

Issued NOV 86-091-000-001 containing one violation for failure to meet effluent limitations

Discussion:

Haul roads are well maintained. All three basins (001, 002, and 003) were discharging during this inspection. Field tests revealed that basin discharges from 002 and 003 were in compliance. Discharge from basin 001 was field tested and found to exceed effluent limitations for pH. Samples were collected and taken to a lab for analysis. Laboratory analysis indicated that basin 001 was discharging water with a pH of 3.73. This discharge resulted in the issuance of Notice of Violation No. 86-91-000-001 containing one violation for failure to meet effluent limitations. Laboratory analysis from basin 001 is

Permittee Anyole Coal Company  
Permit No. 88-A03

summarized as follows:

	<u>pH</u>	<u>Acidity</u>	<u>Alkalinity</u>
Basin 001 discharge	3.73	99.84	0
Basin 001 upstream	6.89	6.12	12.94
Basin 001 downstream	6.60	7.08	12.94

At this point the inspection concluded.

Service of NOV No. 86-091-000-001 was effective on 12/10/86 at the tipple facility in Morley. Present to accept service was Lloyd Smith, tipple manager

Mr. Lloyd Smith was informed about the issuance of this NOV. This discussion included the nature of the violation, the abatement measures, the basin involved, and the abatement time.

Performance standards not indicated as in compliance are summarized as follows:

25F: Effluent violation addressed in NOV 86-091-000-001.

Item 28 is not in compliance as evidenced by NOV 86-091-000-001.

There is consistency between the assessor's and inspector's statements regarding the seriousness of the violation. Excerpts from the Assessment Manual regarding seriousness follow:

\*\*\*\*\*  
3.3 Seriousness

In assessing seriousness, the first aspect to consider is whether the violations was an event, potential event, or an obstruction. Event violations cause or potentially could cause environmental damage, personal injury, or property damage which could or did result from the violations of the regulation. Obstruction violations are those which prevent the inspectors or other OSMRE personnel from reviewing the overall mine operation for administrative, technical, and procedural review as set forth in Public Law 95-87. The threshold for seriousness is twenty-one (21) points.

Seriousness is subdivided into two elements: the probability of occurrence and the extent of potential or actual damage. Under CFR 30 Part 845.13 (b) (2) (i), probability of occurrence points are to be assessed as follows:

- |                       |              |
|-----------------------|--------------|
| (a) occurred          | 15 points    |
| (b) likely to occur   | 10-14 points |
| (c) unlikely to occur | 5-9 points   |
| (d) insignificant     | 1-4 points   |
| (e) none              | 0 points     |

\*\*\*\*\*

From the documents in the case file, the assessment of 15 points for the probability of occurrence appears accurate. The laboratory reports in the inspection report verify that the water discharging from the basin was out of compliance for pH. The assessment explanation mirrors the statement from the inspection and lab reports, and the assessment manual indicates that 15 points should be awarded, as the event has occurred. During the conference these facts should be discussed with the operator. Unless he has documents that would nullify other documents that are already in the file, the assessment for probability will be affirmed.

The extent of potential or actual damage will be addressed next. Again, the documents present in the file, plus any additional data obtained from communication with other offices within OSMRE associated with the case, will be analyzed and compared. A copy of the Inspector's Statement relating to the extent of the damage for this violation and a related excerpt from the Assessment Manual follow:

INSPECTOR'S STATEMENT

(a). Event Violations (go to (B.) if this is an obstruction or enforcement violation)  
1. What natural 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

← event or obstruction 2

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

The event has happened. Discharge from basin 001 was out of compliance for p H. Basin 001 discharge had a pH of 3.73.

← probability of occurrence

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? Damage does extend off the permit area.

The damage to the receiving stream is slight. Lab analysis of impacts to the receiving stream is as follows: upstream pH 6.89, downstream pH 6.60, acidity upstream/downstream was unchanged, and alkalinity upstream was 10.95 dropping to 9.95 on the downstream.

← what was the extent

4. How much damage might have occurred if the violation had not been discovered by an inspector? Describe this potential damage. Would the damage extend off the permit area? Damage associated with this type of violation (effluent limits) invariably occurs off the permit area. The basins have been in place quite some time, no previous effluent violations have been documented, and the basins only discharge during rainfall events. It is doubtful that off-site damage will get any worse than that documented in this violation.

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

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

\* \* \* \* \*

3.3 Seriousness (From Assessment Manual)

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

- (a) damage which could extend off-permit 8-15 points
- (b) damage confined within permit 0-7 points

Based on the facts in the violation, inspector's report and statement or other documentation concerning the violation the assessor determines the applicable categories for seriousness and assigns penalty points. If damage is confined within the permit area, assessor begins with three (3) points and moves up or down depending on the mitigating circumstances. If damage could extend beyond the permit area the assessor begins with eight (8) points and moves up to the maximum of fifteen (15). The probability of occurrence should be fine-tuned to the mitigating 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 within the point scales.

The permittee, during the conference, may present information concerning the seriousness of the violation. The information may create the need to affirm, raise or lower the proposed assessment based on the presented information. Normally the actual violation plus the inspector's report and statement will be used as the documentation for the assessment of penalty points relating to seriousness.

\* \* \* \* \*

As indicated in the excerpt of the Assessment Manual above, the range of assessment points for damage which could extend off-permit is from 8-15. The assessed points of 9 thus falls in the low range in the off-permit category. This assessment has been made in light of the inspector's statement that:

....damage to the existing stream is light...no previous effluent violations have been documented, and the basins only discharge during rainfall events. It is doubtful that off-site damage will get any worse than that documented...

The Conference Officer should question the operator regarding the distance from the ponds to the nearest receiving stream, the estimated amount of actual discharge, the number of times the ponds have discharged previously when they were not in compliance, etc.. Unless the operator's statements and furnished documents are significantly different than those of the inspector, the assessment for extent of damage will be affirmed.

Negligence is the next section of the assessment to be analyzed. The inspector's statement indicates that "operator usually treats the two basins on this area that have pH problems." This statement would indicate this was "ordinary negligence", and the categories of "reckless" or "knowing and willful conduct" would be inappropriate for this violation. Based on the Assessment Manual, it appears that an assessment of 12 negligence points is appropriate unless the operator provides documents proving negligence points should be reduced.

\* \* \* \* \*

### 3.5 Negligence (From Assessment Manual)

Assessing this 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. It is the permittee's responsibility to learn and follow the regulations. The threshold for the criteria, negligence, is thirteen (13) points.

The following are the four categories of degree of negligence defined by regulations and BCPA policy:

- |                                 |              |
|---------------------------------|--------------|
| (a) no negligence               | 0 points     |
| (b) negligence                  | 1-12 points  |
| (c) recklessness                | 13-20 points |
| (d) knowing and willful conduct | 21-25 points |

30 CFR Part 845.13(b)(3)(ii)(b) states: "Negligence means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care."

In assessing negligence, the assessor should always start at twelve (12) points and work down for moderating circumstances. Thirteen (13) to twenty (20) 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, and requires a greater degree of care to insure safety.

\* \* \* \* \*

Good faith is the next item to be analyzed. Good faith points are designed to motivate the operator to abate the violation as rapidly as possible after notification of the violation. The operator is thus rewarded, by a reduction in the penalty amount, if abatement is achieved rapidly using extraordinary measures (extra effort, money, equipment and manpower expended to implement rapid abatement).

Rapid compliance means that 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.

Good Faith points are the most important tool that the Conference Officer can use to motivate operators to resolve problems as quickly as possible. As soon as a conference request approval is received, the Conference Officer should determine if the violation(s) has been abated. If not, the operator should be contacted to discuss the potential awarding of good faith points

This EXHIBIT from the Assessment Manual explains how to calculate the awarding of Good Faith points.

The following scale shall be used as a guide in awarding good faith points, recognizing that in order to award good faith points for rapid compliance there must be a finding that extraordinary measures\* were used and that rapid abatement was achieved as indicated in 30 C.F.R. S 845.13 (b)(4)(ii)(A). In calculating the time set for abatement, include cases where the time for abatement has been extended by the inspector for extenuating circumstances.

(p. 35-Assessment Manual)

- 10 points: Awarded when abatement occurs immediately, or within up to 10 percent of the time set for abatement.
- 9 points: Awarded when abatement occurs within 11 to 20 percent of the time set for abatement.
- 8 points: Awarded when abatement occurs within 21 to 30 percent of the time set for abatement.
- 7 points: Awarded when abatement occurs within 31 to 40 percent of the time set for abatement.
- 6 points: Awarded when abatement occurs within 41 to 50 percent of the time set for abatement.
- 5 points: Awarded when abatement occurs within 51 to 60 percent of the time set for abatement.
- 4 points: Awarded when abatement occurs within 61 to 70 percent of the time set for abatement.
- 3 points: Awarded when abatement occurs within 71 to 80 percent of the time set for abatement.
- 2 points: Awarded when abatement occurs within 81 to 90 percent of the time set for abatement.
- 1 points: Awarded when abatement occurs within 91 to 98 percent of the time set for abatement.

\* DEFINITION OF EXTRAORDINARY MEASURES

INITIATIVE - how quickly operator begin work to abate violation.

AND  
CONSISTENCY - once work for abatement begin how consistently did the operator work.  
AND

COMMITMENT OF RESOURCES - was additional help or equipment hired to abate violations? Was coal removal interrupted? Were additional hours worked? Was at least 1/3 of the operators equipment placed on abatement of the violation?

if rapid abatement, using extraordinary measures, is achieved.

The scale for implementing good faith points appear on the facing page, and information from the Assessment Manual follows:

\* \* \* \* \*

Good Faith

(From Assessment Manual)

Points for good faith may be awarded as follows:

- (a) Normal compliance or lack of abatement 0 points
- (b) Rapid compliance + extraordinary measures -1 to -10 points

\* \* \* \* \*

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

To award good faith there must be documentation that extraordinary measures were used in addition to rapid compliance. In calculating the time set for abatement, include any extensions of time given by the inspector for extenuating circumstances. Extraordinary measure must be fully documented by obtaining actual documents reflecting the efforts taken and an affidavit from the operator outlining the measures employed. A sample affidavit is presented on the following page.

SAMPLE AFFIDAVIT  
STATEMENT OF JOHN DOE

I, John Doe, Engineer for ABC Coal Company, Inc. make the following statement to demonstrate extraordinary efforts taken by ABC Coal Company, Inc. to achieve rapid abatement of violation 1 of 2, citation number NOV 86-091-016-002(3), mine #24 in Scott County, Tennessee.

(1) I pulled eight men from active production mine #26 in Fentress County, Tennessee to inactive mine #24 in Scott County, Tennessee, approximately 25 miles away.

(2) I pulled one dozer, one front end loader, and two trucks from active production mine #27, Whitley County, Kentucky, approximately 75 miles away.

(3) All equipment was hauled from mine #27 by contract carrier, XYZ Haulers, of Williamsburg, Kentucky at a cost of \$2,500.00. (Copy of invoice and/or payment is attached).

(4) Contracted with JOB Consulting, Inc., of Oak Ridge, Tennessee at a cost of \$1,800.00 (copy of invoice attached) to design and assist in the installation of the treatment system required to abate the violation.

(5) I personally supervised and directed the work to achieve abatement of this violation for approximately 12 hours.

(6) Abatement was achieved at 10:00 a.m. on June 30, 1986.

(7) Jack Labor called Inspector Jake Q. Smith at 10:15 a.m., June 30, 1986, advising him that abatement had been achieved and effluent limits were in compliance.

(8) Inspector Smith returned to the site of violation July 1, 1986 at 11:00 a.m. and issued termination for the violation.

State of \_\_\_\_\_

County of \_\_\_\_\_

I hereby affirm, under oath, that the foregoing is correct and true to the best of my knowledge.

\_\_\_\_\_  
John Doe, Engineer

Sworn to before me and subscribed in my presence this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

(Include country, state and  
expiration date of commission)

The basic rules in calculating the days between service and abatement or termination to determine good faith potential are as follows:

1. the day of service is not counted;
2. the day of termination or abatement is counted; all modification of abatement dates must be considered;
3. if the time between service and termination or abatement is seven (7) days or less special rules apply (see CFR 700.15(c)).

To determine the date of service the examination of various documents is essential. If the citation was served by hand by the inspector, the citation will bear the name, title, and signature of the person served in the lower left corner of the citation. Normally the date of service will be the same as the date of inspection. If the citation was served by certified mail, block 18 should reflect the date of mailing and the certification number. In this case the date of service is determined by examination of the Domestic Return Receipt. The date of service and the person served should appear on the card. If the card is not available or the information is not reflected, the date of mailing plus three days may be used to calculate the date of service.

Normally the date reflected on the termination notice is the date used for the abatement date. There are cases when the abatement date is different than the termination date shown on the notice. The inspector is sometimes unable to reinspect at the time of actual abatement and the termination date reflects the date of reinspection. If documentation can be obtained to verify the true date of abatement, and the inspector concurs, the actual date of abatement should be used in calculating the number of days for final assessment and in the consideration for good faith.

In order to compute the days that a violation for a NOV was in effect, the following documents need to be examined:

- Proof of service on the NOV
- The "time for abatement" on the NOV
- Any modifications of the NOV affecting time for abatement
- The termination notice

The documents for "Anyole Coal Company" appear on the following pages.

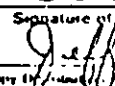
U.S. DEPARTMENT OF THE INTERIOR Office of Surface Mining Reclamation and Enforcement <b>NOTICE OF VIOLATION</b> Permanent Regulatory Procedures			1. Notice of Violation Number 86-091-000-001 TV 1
2. Name ANYOLE COAL COMPANY <input checked="" type="checkbox"/> Permittee <input type="checkbox"/> No Permit		Originating Office Address OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828	
3. Mailing Address P.O. Box 000, Jellico, TENN. 37762			
4. Name of Mine MORE Tipple <input type="checkbox"/> Surface <input checked="" type="checkbox"/> Other (Specify) <u>Tipple</u> <input type="checkbox"/> Underground		Telephone Number (615) 632-1718	
5. Telephone Number (615) 555-7225	6. County Campbell	State TENNESSEE	9. Date of Inspection DECEMBER 10, 1986
7. Operator's Name (if other than permittee). SAME AS ABOVE			10. Time of Inspection From 12:10 <sup>PM</sup> To 12:45 <sup>PM</sup>
8. Mailing Address SAME AS ABOVE			
11. State Permit Number 88-AC3	12. NPDES Number TN 005555	13. MSHA ID Number 40-00000	14. OSM Mine Number

**IMPORTANT—Please Read Information on the Back of this Page**

15. Print Name of Person Served ANYOLE COAL COMPANY	18. Date of Service 12-10-86 HAND-SERVED ←
16. Print Title of Person Served	19. Print Name of Authorized Representative
TIME FOR ABATEMENT (Including Time for Interim Steps, if Any) FRIDAY, DECEMBER 19, 1986 AT 10:00 AM ←	

Date of Service ←  
 12-10-86  
 Time for Abatement  
 12-19-86

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

14. Notice of Violation Number 86-091-000-001	Dated 12/10/86	15. Cessation Order Number - - -	Dated
16. VIOLATION <u>1</u> OF <u>1</u> IS MODIFIED. (Describe Action and Justify) ABATEMENT DATE IS EXTENDED TO 10:00 AM ON <u>FRIDAY</u> DEC. 22, 1986. PERMITTEE/OPERATOR REQUESTED THE EXTENSION IN ORDER TO TRY ADDITIONAL TREATMENT METHODS. SITE INSPECTION INDICATED THAT THE BASIN 001 HAD BEEN TREATED WITH AGRICULTURAL LIME WITH LIMITED SUCCESS. THE BASIN PH HAD BEEN RAISED A FULL PH UNIT FROM 3.7 TO APPROXIMATELY 4.7. IN-FLOW INTO THE BASIN HAD BEEN TREATED AND WAS IN COMPLIANCE. AS THE PERMITTEE/OPERATOR IS MAKING "GOOD FAITH" EFFORT TO ABATE, THE EXTENSION IS GRANTED.			
17. VIOLATION _____ OF _____ IS MODIFIED. (Describe Action and Justify) ←			
18. VIOLATION _____ OF _____ IS MODIFIED. (Describe Action and Justify)			
19. Print Name of Authorized Representative JEFF Signature of Authorized Representative 	HAND SERVED 12/18/86 J. Identification Number 000 Effective Date 12/17/86		

Modified time  
 for Abatement  
 12-22-86

This is the termination or vacation notice whichever is applicable. Document should be reviewed for statements and dates. Only if a violation has been satisfactorily resolved is settlement possible.

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 <i>ANYOLE COAL COMPANY</i>		P/Permittee <input type="checkbox"/> No Permit		Originating Office Address <i>OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828</i>
2. Mailing Address <i>P.O. Box 000, Jellico, Tennessee 37762</i>				
3. Name of Mine <i>Moe E Tipple</i>		Surface <input type="checkbox"/> Other (Specify) <input checked="" type="checkbox"/> <i>Tipple</i>		Telephone Number <i>(615) 632-1718</i>
4. Telephone Number <i>(615) 784-7225</i>	5. County <i>Campbell</i>	State <i>TENNESSEE</i>		8. Date of Inspection <i>December 18, 1986</i>
6. Operator's Name		9. Time of Inspection From <i>11:35 AM</i> To <i>11:55 PM</i>		
7. Mailing Address				
10. State Permit Number <i>88-AC3</i>	11. NPDES Number <i>TNCC5555</i>	12. MSHA ID Number <i>40-00000</i>	13. OSM Mine Number	
ACTIONS TAKEN				
Authority: Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201) the following action is taken:				
14. Notice of Violation Number <i>86-091-000-001</i>	Dated <i>12/10/86</i>	15. Cessation Order Number - - -	Dated	
16. VIOLATION <u>1</u> OF <u>1</u> IS <input checked="" type="checkbox"/> Terminated <input type="checkbox"/> Vacated for the Following Reasons: <i>Permittee/operator has performed ABATEMENT MEASURES. BASIN 001 HAS BEEN SUCCESSFULLY TREATED AND IS IN COMPLIANCE WITH EFFLUENT LIMITATIONS.</i>				Termination or vacation?  <i>Termination 12/18/86</i>
17. VIOLATION _____ OF _____ IS <input type="checkbox"/> Terminated <input type="checkbox"/> Vacated for the Following Reasons:				
18. VIOLATION _____ OF _____ IS <input type="checkbox"/> Terminated <input type="checkbox"/> Vacated for the Following Reasons:				
19. Print Name of Authorized Representative <i>J. E. P.</i>		Identification Number <i>000</i>		
20. Signature of Authorized Representative <i>J. E. P.</i>		Effective Date <i>Dec. 18, 1986</i>		

Copy of conference appointment letter  
Sign-in sheet

In addition, the Conference Officer may wish to have a copy of pertinent regulations; CFR 30 and Public Law 95-87, and the Conference Manual in the conference room. It might be beneficial to have an extra copy of Table A of the manual available for ready reference on conversion of points and calculation of penalty based on number of days.

## 2.6 Conducting the Conference

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

As it is essential there be a record of those attending the conference, the officer will provide a sign-in sheet (see Exhibit 14) to record attendance.

After the opening remarks by the Conference Officer, the permittee may present information that is relevant to the assessment. The conference should cover the penalty points assessed for each aspect of the violation(s); the discussion will include the assessment for history, seriousness, obstruction, negligence and good faith points. The review and analysis of assessed points in each area will be viewed in light of information derived from the operator or his representative(s), and representatives from the Branch of Inspection and Enforcement, Permitting, Bonding, or the Solicitors. The operator may present documents or discuss extenuating circumstances relating to the violation(s). Any revisions in assessed points must be in concert with the Assessment Manual and must be fully documented. 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.

Any presentations by the public are made after the permittee's presentations are completed. According to 30 CFR 845.18 (b)(2), any person has a right to attend and participate in the conference. 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 officer will seek the assistance from other offices within OSMRE, following the conference, to verify the public testimony.

The Conference Officer must direct the discussions to facts relevant to the assessment, not the fact of the violation.

in escrow) must accompany the application.

In closing the conference, the Conference Officer should thank the permittee and the public for appearing. The permittee should also be advised of the right to request a hearing to further appeal, pursuant to 30 CFR 845.19. In addition, the permittee should be counseled on avoiding future violations and on abating any other violations that may have already occurred as rapidly as possible.

## 2.7 Settling the Cases

The Conference Officer will consider all relevant information on the violation and send a written Conclusion of Conference report to the permittee. 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 the final order and subsequent collection procedures.

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 operator, the rendering of payment with signature of permittee consenting to settlement, or for time for consulting with other officials regarding the case.

If the permittee consents to the assessment but is unable to render full payment, an installment agreement may be considered. A payment of at least 10 percent must be rendered with the consent agreement and the balance is to be paid in a maximum of twelve monthly payments. The minimum penalty amount eligible for a payment plan agreement is \$1,000.00. Operators that have previously defaulted or who have not paid other agreements timely will not be offered new agreements.

It should be tactfully pointed out to the permittee, if agreement cannot be achieved, that further appeal will require additional time and effort. The permittee has the right of further appeal and, if so inclined, should be advised of the procedures. The permittee's plan for further appeal should not have any bearing on the outcome or decision of the conference proceedings.

## 2.8 Preparing Conference Report

An Assessment Conference Report will be filled out for each NOV or CO considered in the conference. This report will provide documentation of revised civil penalty for each violation considered at the conference, changes in points and the rationale for changes. It is essential that the reasons for changing points be documented, be consistent with policy, and be accurate reflections of facts made available to the Conference Officer.

The narrative section of the Assessment Conference Report, which is an in-house explanation for any adjustment of penalties, will normally not be sent to companies.

Within 30 days of the conference, the letter (and forms relating to the conference) will be sent to the permittee. If payment is still due, the letter and forms will be sent by certified mail, return receipt requested, so that OSMRE has a record of receipt by the permittee. Copies of all documents sent to the permittee will be made a part of the assessment file. Additionally, the certified mail receipt should contain the number of the specific violation(s).

## 2.9 Conference Officer Audit Report

A Conference Officer Audit Report will be submitted to the reviewer/rater along with the Conclusion of Conference Report. The reviewer will initial each section that he/she considers 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 initialing. When the audit report has been fully approved and initialed by the reviewer, the Conference Officer or assistant prepares three copies of the report and submits two copies to the Program Manager, who may do the following:

- a. approve the Conclusion of Conference Report:
  - (1) initial the audit report
  - (2) date the Conclusion of Conference Report
  - (3) notify the Conference Officer that a copy of the report may be sent to the operator and specify the date to be inserted on the letter
  - (4) forward a copy of the report to BCPA
- b. if the report is not approved:
  - (1) return the Conclusion of Conference report to the Conference Officer for revision
  - (2) initial satisfactory sections of the audit report, and specify areas requiring correction or revision

When corrections or revisions are accomplished, the report is re-submitted to the Program Manager for approval. Upon approval, the letters and reports are sent to the operator and BCPA.

The Conference Officer Audit Report for Anyole Coal Company follows on the next three pages.

For "Anyole Coal Company," the fictitious case used throughout this manual, the operator had been contacted after pre-conference analysis. The operator was advised of the need for documentation in reference to the awarding of good faith. An appointment letter was sent by regular mail as previous contact had already been established verifying the identity and proper address of the operator. A sign-in was prepared and completed by the operator during the conference. The conference was held, a decision was made by the Conference Officer and the reviewer concurred with the decision. The operator was advised of the decision and agreed to render full payment for the revised penalty. A copy of the pertinent documents that were used for this case follow the Conference Officer Audit Report.

EXHIBIT 4 to Table E (Continued)

The audit report is to be attached to each completed conference case. Items should be reviewed and each part examined to assure that accuracy and completeness has been achieved. Only the appropriate pages of the audit report should be attached to the completed cases. The audit report will be completed by the Rater and the Program Manager.

CONFERENCE OFFICER AUDIT REPORT

		<u>Date of Review</u>
<u>ANYOLE Coal Company</u>	<u>NS6-91-000-001(1)</u>	<u>3-11-87</u>
Company Name	Citation #	Date of Conf.
<u>12-18-86</u>	<u>1600</u>	<u>1200</u>
Termination Date	\$: NOPA	\$: Revised Penalty
<u>1200</u>		<u>Kweisley</u>
\$: Collected	\$: Payment Plan	Conference Officer

I. Answer the following questions regarding your Conclusion of Conference Report.

Manager's Concurrence		Yes	No	Rater's Concurrence (Initials)
<u>Elj</u>	1. Proper company name and citation number(s) appear on relevant sheets of the report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pl</u>
<u>Elj</u>	2. The type of letter (i.e.- full payment or no payment required) is appropriate to the conclusion of conference.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pl</u>
<u>Elj</u>	3. NOPA amount is transferred accurately to the conference report.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pl</u>
<u>Elj</u>	4. Additions to or reductions in the penalty are accurately computed.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pl</u>
<u>Elj</u>	5. Narrative is clearly and accurately written.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pl</u>
<u>Elj</u>	6. Narrative is free of spelling and grammatical errors.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pl</u>
<u>Elj</u>	7. A report for each violation conferred is included in the report.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Pl</u>
<u>Elj</u>	8. A copy of the vacation of the violation(s) is attached if it has been vacated.	<u>n/a</u>	<input type="checkbox"/>	<u>Pl</u>

3/11/87  
Date

3-13-87  
Date

EXHIBIT 4 to Table E (Continued)

This page of the audit report only needs to be submitted if there was a payment or pay agreement executed.

Angie Cook Co                      NSC-71-000010                      Johnston  
 Company Name                      Citation #                      Conference Officer

The following questions apply to those conferences in which the operator paid the revised penalty in full or signed a payment agreement. If these did not occur relative to the conference, do not include this sheet.

Manager's Concurrence	Yes	No	Rater's Concurrence (Initials)
<u>PK</u>			
9. A copy of the check and/or assurance and the signed Consent Assessment of Civil Penalty Agreement (Full Payment) are included in the report when the penalty has been paid as the result of the conference.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PK</u>
<u>PK</u>			
10. A copy of the payment plan agreement and down payment (if required) and the signed Consent Assessment of Civil Penalty (Payment Plan) are included in the report when the operator has agreed to this agreement.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PK</u>
<u>PK</u>			
11. Company name, citation and permit numbers are consistent between the Conclusion of Conference report and the Consent assessment of Civil Penalty agreement.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PK</u>
<u>PK</u>			
12. The interest rate on the Consent of Civil Penalty Agreement is listed at 7% and the payment amount and due date for payments are consistent with those in the payment plan chart and the Civil Penalty Remittance forms.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PK</u>

Interest is determined by the U. S. Department of the Treasury; it has fluctuated annually. Any rate changes, which are posted in the Congressional Record, must be reflected in agreements.

EXHIBIT 4 to Table E (Continued)

This page of the audit report is only applicable when there has been a revision of proposed assessment. As noted there must be justification and documentation sufficient to allow the revision.

Anyole Coal Co                      MSB-91-000-001(1)      KNISLEY  
 Company Name                      Citation #                      Conference Officer

II. If the penalty was reduced, answer the following questions:

1. Penalty reductions follow guidelines outlined in the Assessment Manual:

Manager's Concurrence	Yes	No	Rater's Concurrence (Initials)
<u>EF</u>	<u>✓</u>	—	—

Rater's Comments:

*Adherence to guidelines for joint reduction for Good Faith - rapid abatement plus extraordinary measures.*

2. Documentation is presented in the Conclusion of Conference Report to justify penalty reductions:

Manager's Concurrence	Yes	No	Rater's Concurrence (Initials)
<u>EF</u>	<u>✓</u>	—	—

Rater's Comments:

*Affidavit from operator*

3. The Conference Officer's file contains sufficient information and documentation to support the justification presented in the Conclusion of Conference Report.

Manager's Concurrence	Yes	No	Rater's Concurrence (Initials)
<u>EF</u>	<u>✓</u>	—	—

Rater's Comments:

*Inspector's statement and report  
 Termination notice  
 Affidavit from operator*



EXHIBIT 4 to Table E (Continued)

This page reflects the cause of the citation, the initial proposed assessment and the final assessment as a result of the conference. In addition it shows the dates as reflected in the enforcement package.

ASSESSMENT CONFERENCE REPORT  
(Continued)

Page 2 of 2

Company Name: Anyole Coal Company

Permit No: 88-A03

1. Citation No: N86-091-000-001(1)

Violation 1 of 1

(a) Nature of Violation: Failure to meet effluent limitations for water discharge.

(b) Date For Abatement: 12-22-86 Date Served: 12-10-86  
Date of Termination: 12-18-86

2. Conference Result	Proposed Assessment	Conference Assessment
(a) History/Prev. Violation	-----	-----
(b) Seriousness		
(1) Probability of Occurrence	_15_____	_15_____
Extent of Damage	_9_____	_9_____
(2) Obstruction to Enforcement	-----	-----
(c) Negligence	_12_____	_12_____
(d) Good Faith	-----	_4_____
TOTAL POINTS	_36_____	_32_____
TOTAL AMOUNT ASSESSMENT	\$ <u>1,600.00</u>	\$ <u>1,200.00</u>



EXHIBIT 4 to Table E (Continued)

ASSESSMENT CONFERENCE REPORT  
(Continued)

Page 2A of 2

Company Name: Anyole Coal Company

Permit No: BH-A03

Citation No: WRG-091-000-001(1)

Violation 1 of 3

Narrative:

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

Four (4) points good faith awarded for rapid abatement combined with extraordinary measures. Citation was hand served on 12-10-86 with abatement date of 12-22-86, after modification. This allowed 12 days to resolve the problem. Citation was terminated on 12-18-86; within 8 days or in 66.67% of the time allowed for resolution. Inspector's statement commented on good faith efforts and the Operator furnished a sworn affidavit (see attached).

Operator agreed to the revised assessment, signed the consent agreement and rendered full payment.

Full explanation or rationale should be made for any changes or modifications of assessment. In addition documents should be attached or identified that constitute the basis for change.

A brief statement of settlement or non-settlement should be made

All modifications or revisions of assessments should be documented and made a part of the case file. Sworn statements can be obtained or copies of actual documents. There needs to be justification in every instance that caused a revision, reduction or affirmation of assessment. Submitted documents need to be reviewed and evaluated as to whether the assessment as proposed can be modified. Sufficient time may be allowed for the Operator to supply documentation but firm deadlines should be established.

Fig 2B 02 2

Page 1 of 2

STATEMENT OF LLOYD SMITH

I, Lloyd Smith, Manager of Anyole Coal Company, make the following statements to demonstrate extraordinary efforts taken by Anyole Coal Company to achieve rapid resolution of the violation cited under NOV 86-091-000-001(1), More Tipple, located in Campbell County, Tennessee.

(1) There were three men pulled from active production mine #2, Anderson County, Tennessee which is approximately 15 miles away.

(2) I used two of the men to immediately start treating the basin with agricultural lime. The other man was dispatched to LaFollette approximately 8 miles away to secure additional chemicals. For this purpose, I utilized the truck normally used at the active mine site to transport the men and to purchase the chemicals.

(3) After treating and monitoring the basin it was determined that some improvement had been accomplished but the basin was still not within acceptable limits.

(4) An engineering firm was contacted and a representative came to the site. It was recommended a different treatment system be employed and the engineer drew up plans and specifications. The specifications were delivered to a welding shop in Jacksboro and the new system was manufactured. When completed two men were dispatched to secure the new system and return it to the tipple site for installation. The cost of the engineer, construction of the new system, delivery and installation was \$3,121.77. Cost of the chemicals was an additional \$223.84.

(5) When the new system was installed and it was determined the basin was in compliance, a call was made to the Inspector. The Inspector came to the site, made an analysis of the discharge and issued termination of the violation on December 18, 1986.

(6) The resolution of the violation incurred the use of three men for eight (8) days and the exclusive use of the truck for the entire period. This also involved the bulk of my time to supervise and monitor the activities to resolve the violation.

EXHIBIT 4 to Table E (Continued)

Statements should be sworn, notarized and furnished prior to or at the scheduled conference. If the statement was not prepared in advance it may be rendered at a later date or taken during the conference process. Conference Officers have been delegated the authority to administer oaths and the Operator should be asked to confirm that the statements rendered are true and accurate.

Pg 2 of 2

Page 2 of 2

Lloyd Smith, being duly sworn says that the statement made in the foregoing is true to the best of his knowledge.

  
-----  
Lloyd Smith, Manager

State of Tennessee  
County of Campbell

Sworn to before me and subscribed in my presence this the 10th day of March, 1987.

  
-----  
Notary Public

EXHIBIT 4 to Table E (Continued)

Settlement should be achieved if at all possible. A consent agreement is used to affirm settlement. The settlement agreement should be executed and signed at the scheduled conference unless the representative can not sign and render necessary payment. The consent agreement can be prepared and furnished to the representative to be returned by a given date.



United States Department of the Interior

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

RE: Anvole Coal Company :  
: NOV 86-091-000-001(1)  
----- Operator :  
: :  
:

CONSENT ASSESSMENT OF CIVIL PENALTY  
(Full Payment)

THIS AGREEMENT is made and entered into this 11th day of March, 1987, by and between Anvole Coal Company ("the operator") and the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior ("OSM").

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 Operator Notice of Violation ("NOV") No. 86-091-000-001(1), charging the Operator with one or more violations of said Act and regulations at the Operator's surface coal mining operation in Campbell County, Tennessee, operated under Permit No. 88-A03; and

WHEREAS OSM has proposed a civil penalty assessment in the amount of \$1,600.00 for said violation; and

WHEREAS the parties wish to settle all outstanding issues arising out of the issuance of said NOV 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 \$1,200.00 is hereby assessed for the violation cited in the above referenced NOV. This assessment is now final, and any rights the Operator may otherwise have had to contest the proposed penalty assessment are expressly waived.

EXHIBIT 4 to Table E (Continued)

Two original consent agreements should be prepared. Once payment is rendered the payment is identified and one copy is given to the Operator or representative as a receipt. The Conference Officer will never sign this form until payment is rendered as this constitutes receipt of settlement.

2. Receipt of check no. 300 in the amount of  
\$ 1,200.<sup>00</sup> is hereby acknowledged in full payment of  
said final penalty assessment (provided any personal check timely  
clears the financial institution on which it is written).

Anyole Coal Company  
Operator

By Lloyd Smith  
Signature

LLOYD SMITH  
Name (print or type)

MANAGER  
Title

OFFICE OF SURFACE MINING

By: Billy R. Kneisley  
Signature

Billy R. Kneisley  
Assessment Conference Officer

Payments are immediately transmitted to the Lockbox, either by a Conference Officer who has been delegated as a collection officer or by another designated collection officer at the field or area office. An abstract should accompany each deposit.

Department of the Interior  
Office of Surface Mining  
Abstract of Remittances

*SAMPLE*

Deposit Ticket No.: \_\_\_\_\_

Date of Deposit: \_\_\_\_\_

Type: Knoxville Field Office

Item No.	Transaction Number	Name of Remitter & Check Number	Description	Acct. Number	Amount
		Anyole Coal Co. Check No. 300 Dated 3/11/87	Civil Penalties assessed against Anyole Coal Co. NOV 86-91-000-1  FULL PAYMENT	141099	\$1,200.

Anyole Coal Company (615) 555-7225 P.O. Box 000 Jellico, Tn 37762		No. 300
UPTOWN BANK Jellico, Tennessee 37762		<u>March 11</u> 19 <u>87</u>
Pay <u>One Thousand Two Hundred and 00/100</u>		DOLLARS <u>\$1,200<sup>00</sup></u>
To The Order Of: <u>Office of Surface Mining</u>		Anyole Coal Company <u>Shayd Smith</u>
000001111-1111-3333 86-91-000-1 (.)		

The above listed remittance(s) received by: Patricia Baumgardner Date 3-11-87  
Collection Officer (Field Office)

The above listed remittance(s) received and deposited by: \_\_\_\_\_ Date \_\_\_\_\_  
Collection Officer (Denver)

## 2.10 Corrections of Conference Officer Documents

If errors are discovered in Conclusion of Conference reports, 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. a new page including the correction, follows the original page containing the error(s). The Conference Officer initials and dates the correction(s).

c. copies of the complete, corrected Conclusion of Conference report, containing original and corrected pages, should be submitted to BCPA, the operator if applicable, and 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 letter.

following sections and are in generalized terms. The specifics are contained in the Assessment Manual within the Civil Penalty Section. Questions concerning proposed assessment may be addressed by contacting the BCPA.

### 3.2 History

The threshold for the criteria, history, is ten (10) points so if this accumulation of points is reached for history a penalty must be assessed. The assessment of history points follows a given formula: one (1) point for each separate NOV violation at the same site within a previous 12-month period; five (5) points for each separate violation in the CO at the same site within a previous 12-month period. 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. It is also noted if a violation is vacated, the violation is not used in assembling history points.

The BCPA will review the previous violations found in the permittee case file and propose the assessment points based on their findings. The Conference Officer must ascertain that the proposed assessment of points are valid and all NOV's and CO's were included. History points may be affirmed, raised or lowered depending on the results of the research and also on data supplied by the permittee in the conference.

### 3.3 Seriousness

In determining the assessment in the criteria; seriousness, the first aspect to consider is whether it should be categorized as an event, potential event or if it was an obstruction. Events are violations that cause or potentially could cause environmental damage, personal injury, or property damage which could or did result from the violation of the regulation. The threshold for seriousness is twenty-one (21) points.

Seriousness is subdivided into two elements of consideration in the assessment of penalty points; the probability of occurrence and the extent of potential or actual damage. Under CFR 30 Part 845.13(b)(2)(i), probability of occurrence points are to be assessed as follows:

- |                       |              |
|-----------------------|--------------|
| (a) occurred          | 15 points    |
| (b) likely to occur   | 10-14 points |
| (c) unlikely to occur | 5-9 points   |
| (d) insignificant     | 1-4 points   |
| (e) none              | 0 points     |

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

- (a) damage which could extend off-permit 8-15 points
- (b) damage confined within permit 0-7 points

Based on the facts presented in the violation, inspector's report and statement or other documentation concerning the violation the assessor determines the applicable categories within seriousness and assigns penalty points within the two elements. If damage for instance would occur only within the permit area, the starting assessment would be three (3) points and move up or down depending on the mitigating circumstances. If damage could extend beyond the permit area the starting assessment would be eight (8) points and move up to the maximum of fifteen (15). The determination of occurrence 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 within the point scales.

The permittee during the conference may present information concerning the seriousness of the violation. The information may create the need to affirm, raise or lower the proposed assessment based on the presented information. Normally the actual violation plus the inspector's report and statement will be used as the documentation for the assessment of penalty points relating to seriousness.

### 3.4 Obstructions

Obstructions are those violations which prevent the inspector from reviewing the overall operations of the mine in determining compliance with regulations. Similarly, violations which prevent the public from identifying the minesite or exercising rights under the Act are considered obstructions. The threshold of points in the criteria; obstruction, is ten (10) points.

Obstruction violations generally involve the permittee's failure to keep records, authorizations, approved plans, or maps at or near the minesite, thereby obstructing the inspector, or the failure to post proper permit or perimeter signs which might hinder public or inspector identification of the minesite. The specific guidelines of obstruction assessment is contained in the Assessment Manual and point assignments have been developed for mine identification signs and other obstruction violations (see Appendix A of Table B). The assessment of points is generally that actual obstruction is assessed in the 10-15 point range while potential obstruction is assessed in the 1-9 point range.

When the violation constitutes an obstruction, the assessment is based on the degree which the violation prevented or impeded enforcement by an inspector or enforcement initiated by the public.

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 situation. Was the particular violation more of an obstruction to enforcement or was it clear that damage had already occurred or was likely to occur?

### 3.5 Negligence

Assessing this 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. It is the permittee's responsibility to learn and follow the regulations. The threshold for the criteria; fault, is thirteen (13) points.

The following are the four categories of degree of fault as defined by regulations and BCPA policy:

- |                                 |              |
|---------------------------------|--------------|
| (a) no negligence               | 0 points     |
| (b) negligence                  | 1-12 points  |
| (c) recklessness                | 13-20 points |
| (d) knowing and willful conduct | 21-25 points |

A no negligence situation is where the operator acted prudently but a violation occurred anyway due to either an Act of God or vandalism. While the permittee cannot prevent the occurrences it can become negligence if the operator does not fix it promptly. When no negligence on the permittee's part can be discerned, no points should be given.

30 CFR Part 845.13(b)(3)(ii)(B) states: "Negligence means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care."

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."

Ignorance of the law is not a no negligence situation. Permittee's are charged with the duty of knowing the regulations. In conflicting cases between jurisdictional agencies such as the State and Federal requirements, the violation would be under

Federal law but the degree of fault would be low. Negligence is the failure of a permittee to exercise the degree of care normally expected of a careful and reasonable operator. Negligent acts include committing an act which 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 assessing under negligence the assessor should always start at twelve (12) points and work down for any moderating circumstances. Thirteen (13) to twenty (20) 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 exist in those instances where the operator is engaged in activities inherently dangerous, and requires a greater degree of care to insure 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:

- (a) A specific permit condition is violated.
- (b) 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.

The point levels for knowing/willful violations are strictly delineated. 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 DSM warnings or citations, the point total should be twenty-four (24). When a wildcatter (an operator without a permit) is involved, the maximum assessment of twenty-five (25) points should be made.

### 3.6 Good Faith

The Conference Officer shall consider good faith of the person to whom the notice or order was issued in attempting to

achieve rapid compliance after notification of the 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 person to whom the notice or order was issued, abated the violation at the time given for abatement.

Points for good faith may be awarded as follows:

- (a) Normal compliance or lack of abatement 0
- (b) Rapid compliance + extraordinary measures -1 to -10

Considerations of good faith would be the examination of initiative, consistency, and commitment of resources, to determine if extraordinary measures were employed in addition to the rapid abatement. Initiative would be how quickly or thoroughly the operator 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 the securing of additional equipment or personnel, interrupting coal removal, expending extra manhours and resources, or other special measures taken to remedy the situation in the fastest available means.

The following shall be used as a guide in awarding good faith points; recognizing, to award good faith there must 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. Extraordinary measures must be fully documented by either obtaining actual documents reflecting the efforts taken or an affidavit from the operator sworn and notarized outlining the measures employed ( a sample affidavit is presented under Exhibit 18).

#### Good Faith Determination Points

- (a) Abatement occurs immediately or within 10 percent of time set -10
- (b) Abatement occurs within 11 to 20 percent of time set -9
- (c) Abatement occurs within 21 to 30 percent of time set -8
- (d) Abatement occurs within 31 to 40 percent of time set -7
- (e) Abatement occurs within 41 to 50 percent of time set -6
- (f) Abatement occurs within 51 to 60 percent of time set -5
- (g) Abatement occurs within 61 to 70 percent of time set -4
- (h) Abatement occurs within 71 to 80 percent of time set -3
- (i) Abatement occurs within 81 to 90 percent of time set -2
- (j) Abatement occurs within 91 to 98 percent of time set -1

TABLE A:

CONVERSION OF POINTS

Under Notices of Violation or imminent harm Cessation Orders the chart below is a conversion of the number of assigned points to a dollar amount which will dictate the civil penalty to be assessed.

CHART 1

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

\*maximum to be assessed

TABLE A: (Continued)

For a Cessation Order a civil penalty of \$750 shall be assessed for each day which failure to abate continues and for each separate violation within the order. Penalty for the failure to abate shall not be assessed for more than 30 days nor less than 1 day for each violation, unless the citation was vacated.

CHART 2

<u>Days</u>	<u>Dollar Assessment</u>
1	750
2	1,500
3	2,250
4	3,000
5	3,750
6	4,500
7	5,250
8	6,000
9	6,750
10	7,500
11	8,250
12	9,000
13	9,750
14	10,500
15	11,250
16	12,000
17	12,750
18	13,500
19	14,250
20	15,000
21	15,750
22	16,500
23	17,250
24	18,000
25	18,750
26	19,500
27	20,250
28	21,000
29	21,750
30	*22,500

\*maximum to be assessed

TABLE B

ASSESSMENT GUIDELINES

These guidelines are extracted and general in nature; the specifics are contained in the Assessment Manual. If there are questions on assessments they should be addressed to the Branch of Civil Penalty Assessments (BCPA) through the appropriate channels.

1. History (Threshold 10 points)

\*1 point for each separate NOV at the same site within previous 12-month period

\*5 points for each separate violation in the CO at the same site within previous 12-month period

\* must have been finalized and not vacated.

2. Seriousness (Threshold 21 points - combination of a&b below)

a. Probability of Occurrence:

(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

b. Extent of Damage

(1) extends off-permit	8-15 points
(2) confined within permit area	0-7 points

3. Obstruction (Threshold 10 points) - see appendix A

a. actual	10-15 points
b. potential	1-9 points

4. Fault (Threshold 13 points)

a. no negligence	0 points
b. negligent	1-12 points
c. recklessness	13-20 points
d. knowing/willful	21-25 points
(1) specific permit violation	21-22 points
(2) previous State warning/citation	23 points
(3) previous OSM warning/citation	24 points
(4) wildcat operation	25 points

5. Good Faith (Rapid Compliance + Extraordinary Measures)
- |   |            |
|---|------------|
| a. immediate abatement or within 10 percent of time | -10 points |
| b. within 11 to 20 percent of time                  | -9 points  |
| c. within 21 to 30 percent of time                  | -8 points  |
| d. within 31 to 40 percent of time                  | -7 points  |
| e. within 41 to 50 percent of time                  | -6 points  |
| f. within 51 to 60 percent of time                  | -5 points  |
| g. within 61 to 70 percent of time                  | -4 points  |
| h. within 71 to 80 percent of time                  | -3 points  |
| i. within 81 to 90 percent of time                  | -2 points  |
| j. within 91 to 98 percent of time                  | -1 point   |

#### Criteria of Extraordinary Measures

To demonstrate employment of extraordinary measures the following criteria can be used as a measurement:

Initiative - how quickly operator began to abate violation?

and

Consistency - once work for abatement began how consistently did the operator work?

and

Commitment of Resources - was additional help or equipment hired to abate violation? Was coal removal interrupted? Were additional hours worked? Was at least 1/3 of the operators equipment placed on abatement of the citation?

#### \*SAMPLE WORDING FOR AWARDED GOOD FAITH

\_\_\_\_\_points good faith awarded for rapid abatement plus extraordinary measures employed. NOV was issued on \_\_\_\_\_, served to operator on \_\_\_\_\_, with abatement date of \_\_\_\_\_; thus giving \_\_\_\_\_days for abatement. Violation was abated on \_\_\_\_\_. Number of days from date of service until the NOV was abated was \_\_\_\_\_. Abatement occurred within \_\_\_\_\_percent of the time set for abatement. Extraordinary measures consisted of:

\*NOTE: To award good faith there must be documentation provided that will confirm or display both the rapid abatement and the extraordinary measures that were employed. The rapid abatement is normally displayed or documented by the inspector's citation and the termination or abatement document. Exhibit 18 is a sample affidavit that may be used by the operator to attest to the extraordinary measures that were employed.

APPENDIX To TABLE B

OBSTRUCTION POINTS GUIDELINE

This list is only a general category of problems encountered under obstruction and is not totally encompassing. Other categories may develop or be encountered and will be assessed as they occur.

1. Permit Sign Violations

- a. No Sign Posted 8 points
- b. Sign posted but incomplete data 2 points  
for each  
missing item

2. Failure to Provide Mine Maps

- a. Lack of map obstructed inspector's inspection 10 points
- b. Lack of map but no actual obstruction 8 points
- c. Lack discovered during administrative check 8 points

3. Failure to Submit Surface or Groundwater Monitoring Plan

- a. Failure to submit - obstructed 10 points
- b. Failure to submit - no obstruction 6 points

4. Failure to Implement Surface or Groundwater Monitoring Plan

- a. Failure obstructed inspector 10 points
- b. Failure did not obstruct inspector 8 points

5. Failure to Maintain Proper Blasting Records

- a. No blasting records exist and blasting has occurred 11+ points
- b. Missing information and could not be extrapolated from records 10 points
- c. Missing information but can be extrapolated from records 8 points

6. Failure to Have All Applicable Permits at Mining Office

- a. All necessary information not provided 10 points
- b. Necessary information provided by operator 8 points
- c. Actual permit made available before inspection was completed 8 points

7. Failure to Have a Prime Farmland Survey
  - a. All failures to have a survey or negative determination 10 points
8. Failure to Have Structures Certified by a Registered Engineer
  - a. A problem is observed 10 points
  - b. no problem observed 8 points
9. Failure to Post Perimeter Markers
  - a. Off-site damage has occurred - change to event and assess under seriousness
  - b. No off-site damage 8 points
10. Failure to Post Blasting Signs
  - a. Potentially Dangerous 8-15 points

TABLE C

GENERAL PROCEDURAL GUIDELINES

These guidelines and the attached flow-chart depict the outline of events and activities normally encountered in the conference procedure. Deviations may occur and will require modification or decisions by the Conference Officer to resolve the issues.

1. Inspection is held and the operator is served with a Notice of Violation (NOV) or a Cessation Order (CO). Operator can exercise any of the appeal rights outlined in Chapter 1, Part 1.2.

2. Assessment office receives a copy of the citation, normally within ten (10) days of the inspection uncovering the violation.

3. Assessment office within thirty (30) days, prepares a Notice of Proposed Assessment (NOPA) and sends the NOPA to the operator along with a blank request for informal conference.

4. Within thirty (30) days of the receipt of the NOPA package, the operator may submit a request for informal conference and return it to the assessment office.

5. If a request for informal conference is submitted, the request is evaluated and, approval or disapproval, is granted by DSM within five (5) days.

6. The approved requests for conferences are dispatched to the office having jurisdiction of the mining site and the request is further issued to the Conference Officer for scheduling of conference. The conference is to be concluded within sixty (60) days of receipt of the approval letter or from the date of abatement, whichever is later. Under special conditions, this sixty (60) day period may be waived.

7. Conference Officers must review the request package and assure the citation is valid and the NOPA is in order. Any questions or discrepancies should be resolved prior to contact with the operator. All appropriate internal documentation should be secured relating to the citation which would include but is not limited to:

- a. Copy of the citation
- b. Copy of all modifications
- c. Copy of termination or vacation, if appropriate
- d. Inspector's statements and narratives

8. When all documents are secured and in order, the

operator should be contacted and a conference scheduled. The Conference Officer discusses any possible revision of assessment points, and documentation required for the proposed revisions, with reviewer.

9. The Conference Appointment Letter will be sent to the operator and a copy posted in the office having jurisdiction over the mine site, at least five (5) days prior to the scheduled conference.

10. The conference site is scheduled and necessary seating and equipment arranged.

11. The Conference Officer introduces self and explains the conference process. (If the operator fails to appear and does not call to request another conference appointment, the conference may be concluded and conclusion of conference letter sent to the operator.)

12. The Conference Officer asks attendees at the conference to complete the sign-in sheet, including signature and title.

13. The conference is conducted, and the Conference Officer either obtains documents to support any proposed revision of the assessment, or in the absence of relevant documentation, proposes to affirm the penalty.

14. The Conference Officer evaluates documents and testimony given by the operator, and gains concurrence with reviewer and/or manager for rendering a final assessment.

15. If the operator does not agree to settle, the Conference Officer explains the hearing process and prepares the conclusion of conference.

16. If operator agrees to settle, a consent agreement is prepared, and the operator signs the agreement and submits a check for the penalty amount.

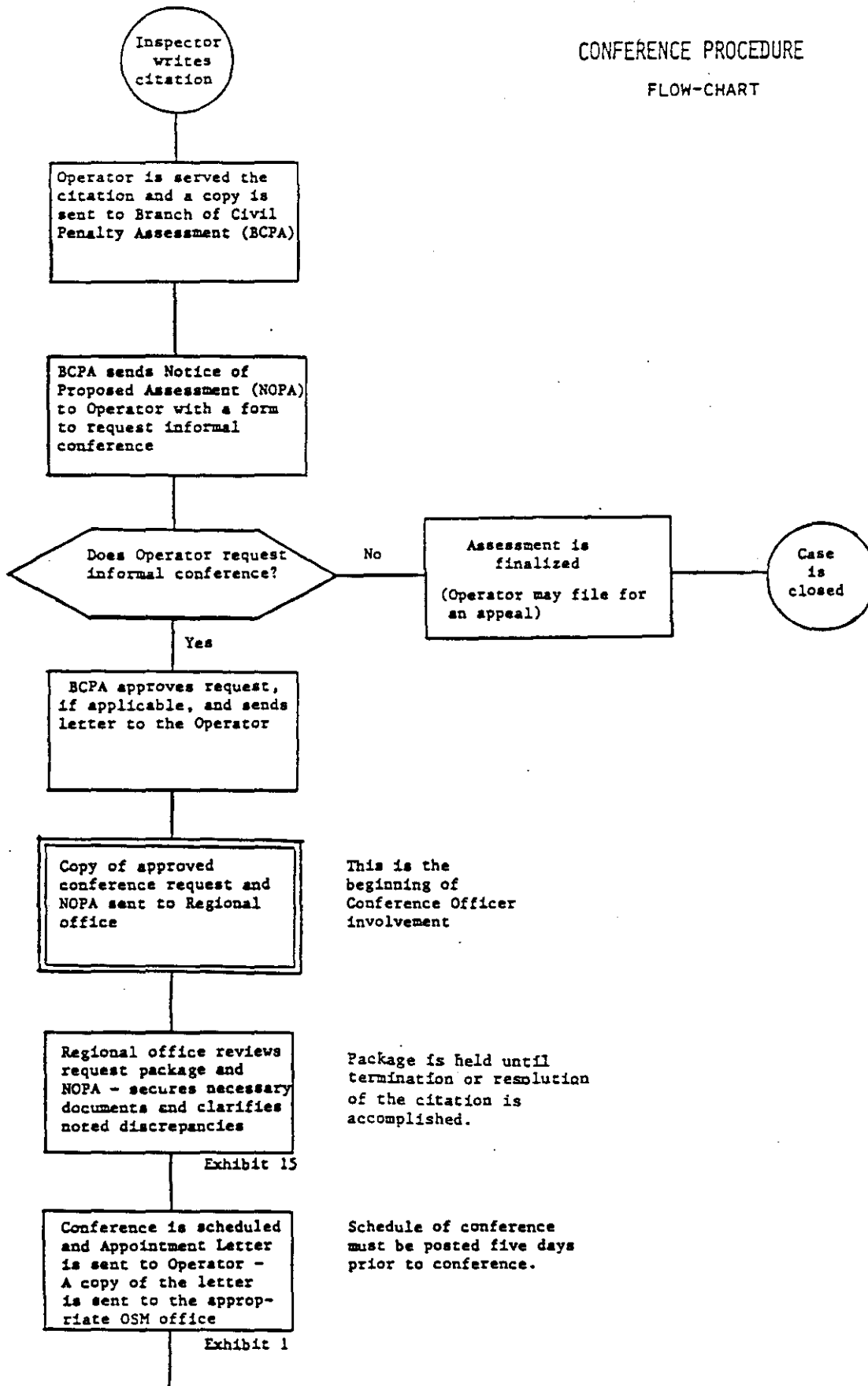
17. If operator agrees to settle but needs to pay the penalty in installments, a consent agreement and payment plan agreement are prepared, and the operator signs the agreements, and submits a check for a down payment of a minimum of 10% of the penalty amount.

18. Prepare Conclusion of Conference Report and appropriate conclusion letter. (See Table D for index of forms)

19. Document the statistics of the conference and send the concluded case to Washington D.C.

CONFERENCE PROCEDURE

FLOW-CHART



This is the beginning of Conference Officer involvement

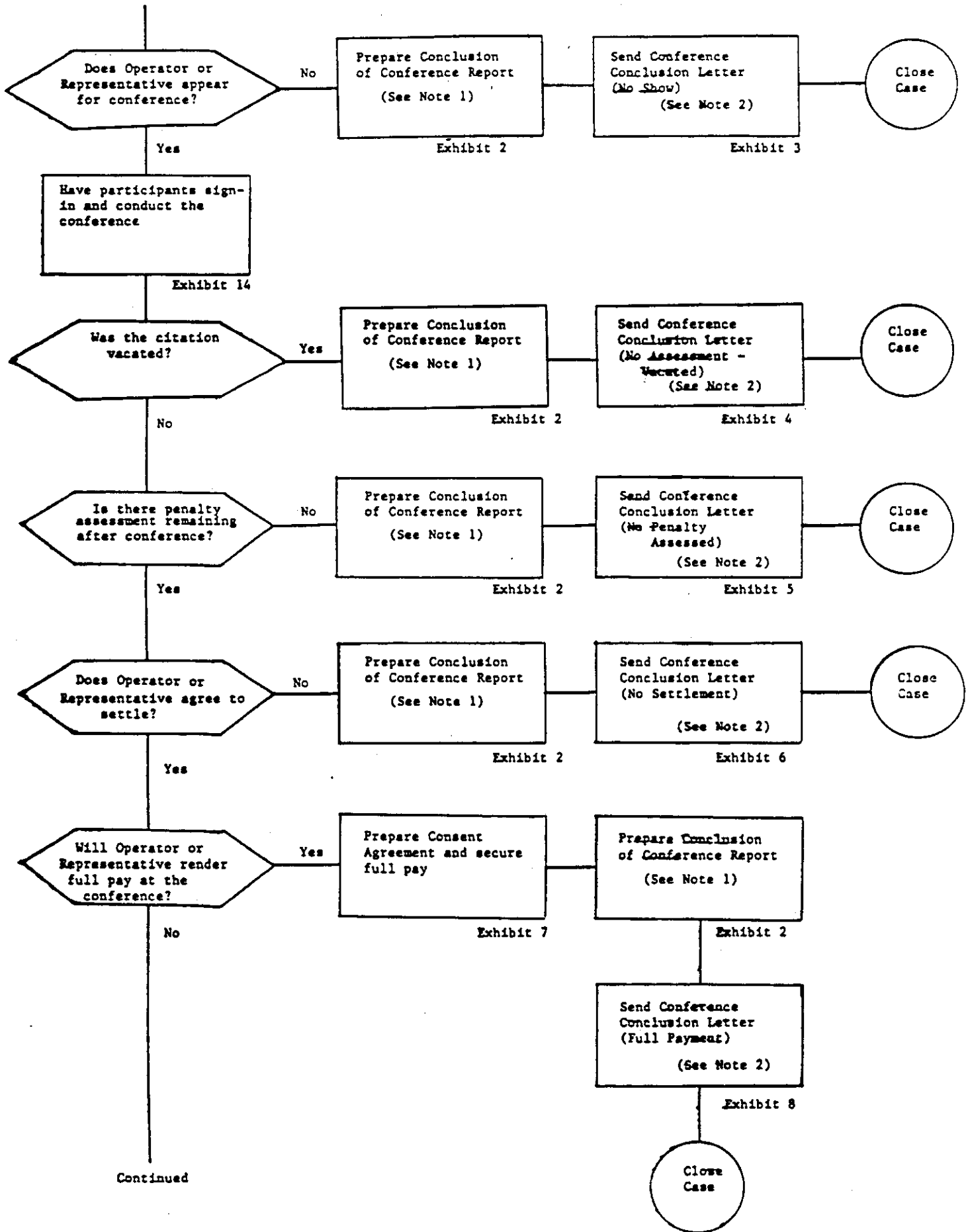
Package is held until termination or resolution of the citation is accomplished.

Schedule of conference must be posted five days prior to conference.

Exhibit 15

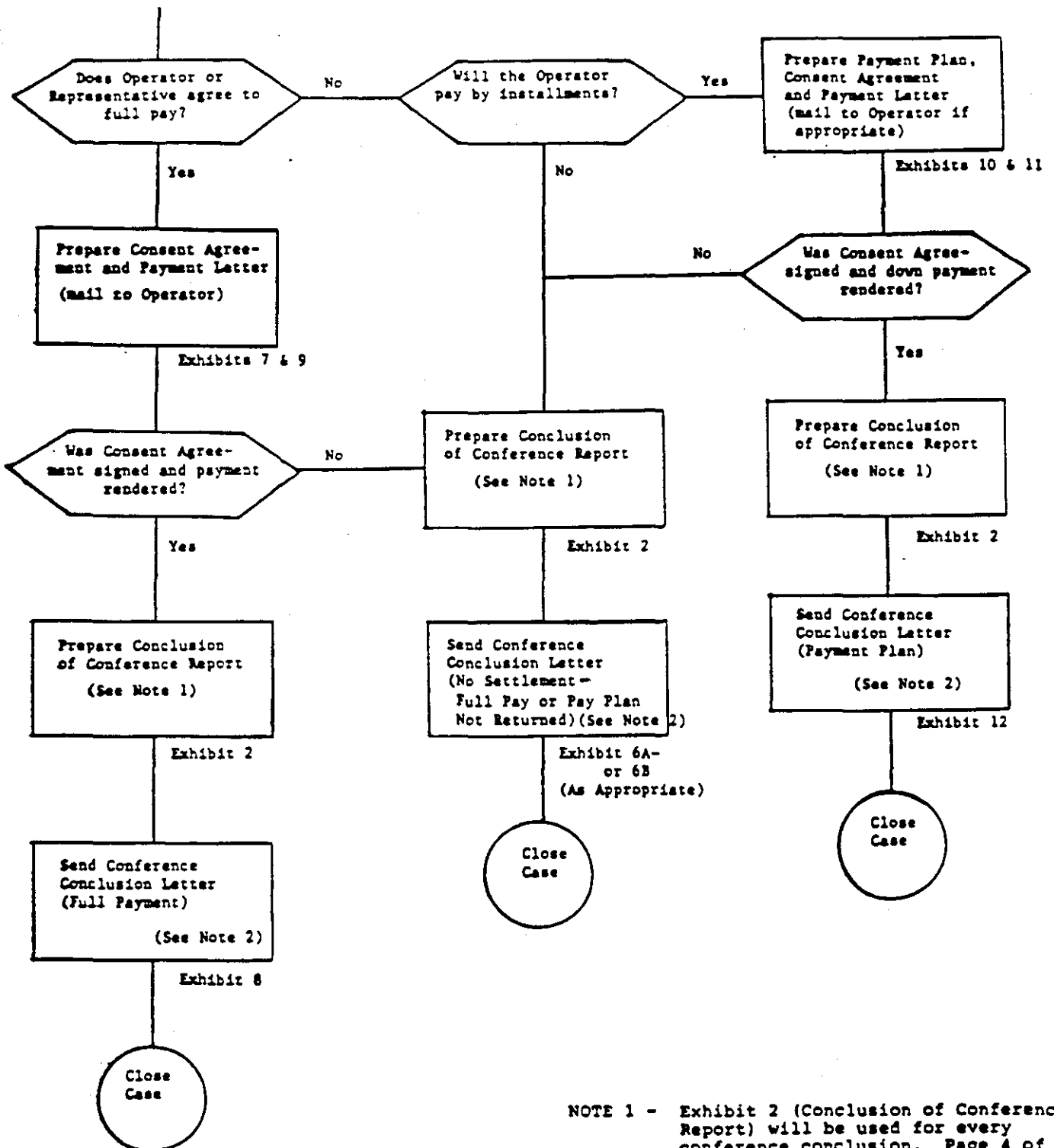
Exhibit 1

Continued





APPENDIX TO TABLE C (CONTINUED)



NOTE 1 - Exhibit 2 (Conclusion of Conference Report) will be used for every conference conclusion. Page 4 of this report is a narrative continuation and used only if needed.

NOTE 2 - Prior to sending out the Conference Conclusion Letter the case must be reviewed and accepted by the Program Manager. The Conclusion of Conference Report and the Conference Conclusion Letter will be left undated until approval is granted. Once approval is rendered the date will be entered and necessary distribution accomplished.

Table D

EXHIBIT INDEX

The attached exhibits are the forms and letters normally used in the conference procedure. Requests for deviations or modifications of these exhibits should be forwarded to the Conference Program Manager.

<u>Exhibit #</u>	<u>Name of Form</u>	<u>Page</u>
1.	Appointment Schedule Letter	73
2.	Conference Conclusion Report	74
3.	Conference Conclusion Letter - No Show	78
4.	Conference Conclusion Letter - No Assessment - Vacated	80
5.	Conference Conclusion Letter - No Penalty Assessed	81
6.	Conference Conclusion Letter - No Settlement	82
6A.	Conference Conclusion Letter - Pay Plan not returned-No Settlement	84
6B.	Conference Conclusion Letter - Full Pay not returned-No Settlement	86
7.	Consent Agreement - Full Pay	88
8.	Conference Conclusion Letter - Full Payment	90
9.	Letter sent for Full Pay	91
10.	Consent Agreement - Pay Plan	92
11.	Letter sent for Pay Plan	94
12.	Conference Conclusion Letter - Payment Plan	95
13.	Conversation Record	96
14.	Conference Sign-in Sheet	97
15.	Pre-Conference Notes	98

16.	Conference Status Report	100
17.	History Sheet	101
18.	Sample Affidavit - Documentation For Extraordinary Measures	102
19.	Conference Officer Audit Report	103
20.	Computerized Payment Plan	106

EXHIBIT 1 - Appointment Letter

\* \* \* \* \*

Mr. Bert L. Jones, President  
Jones & Smith Fuels Inc  
102 N. Broadway, Suite 7  
Anytown, Arkansas 72301

Subject: Jones & Smith Fuels Inc  
C86-099-099-006(1) Permit: 2280000

Dear Mr. Jones:

You have been scheduled an assessment conference on the above referenced citation for February 11, 1987 at 1:30 p.m. at the following address:

Department of the Interior  
Office of Surface Mining  
530 Gay Street, S.W., Room 408  
Knoxville, Tennessee 37902

Please be prepared to submit any material for consideration before or during the conference which concerns the violations or the penalties. You should be prepared to finalize the case at the conclusion of the conference which may include making payment for the agreed penalties. This conference can 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 (615) 673-1234. Only one rescheduling will be considered.

Sincerely,

(name)  
Assessment Conference Officer

\* \* \* \* \*

NOTE: If contact is made with the person requesting the conference, this letter may be sent regular mail. If contact was unable to be established, this letter should be sent certified to assure receipt. If the letter is to be sent certified sufficient time must be allowed in the scheduling to allow receipt of the letter prior to the scheduled conference.

EXHIBIT 2 - Conference Conclusion Report (Page 1 of 4)

\*\*\*\*\*

ASSESSMENT CONFERENCE REPORT

Page 1 of 2

Knoxville Field Office

Company Name: Jones & Smith Fuels Inc

Permit No: 2280000

Citation No: C86-099-099-006(1)

Type of Conference: \_\_\_ in person X telephone \_\_\_ letter.

Date of Conference: February 12, 1987

Persons in Attendance

Title

Bert L. Jones President

\_\_\_\_\_  
\_\_\_\_\_

Violation No.

Amount of Assessment  
As Revised

1 of 1 \$22,500.00

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\$22,500.00

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

(Signature of Conference Officer)

\*\*\*\*\*

EXHIBIT 2 - Conference Conclusion Report (Page 2 of 4)

\*\*\*\*\*  
ASSESSMENT CONFERENCE REPORT  
(Continued)

Company Name: Jones & Smith Fuels Inc

Permit No: 2280000

1. Citation No: C86-099-099-006(1)

Violation 1 of 1

(a) Nature of Violation: Failure to abate N86-099-099-022(1)  
Failure to post a sign at the access point of the designated permit area.

(b) Date For Abatement: FTA Date Served: 10-16-86  
Date of Termination: Not terminated as of conference

2. Conference Result	<u>Proposed Assessment</u>	<u>Conference Assessment</u>
(a) History/Prev. Violation	-----	-----
(b) Seriousness		
(1) Probability of Occurrence	-----	-----
Extent of Damage	-----	-----
(2) Obstruction to Enforcement	-----	-----
(c) Negligence	-----	-----
(d) Good Faith	-----	-----
	30 days @	30 days @
TOTAL POINTS	750	750
	-----	-----
TOTAL AMOUNT ASSESSMENT	\$22,500.00	\$22,500.00
	-----	-----

\*\*\*\*\*

EXHIBIT 11. Letter Sent to Secure Payment Plan

\*\*\*\*\*

Mr. Robert E. Hoops, Vice President  
American Federal Mining Co  
P.O. Box 140000  
Anytown, Tennessee 37777

Re: Assessment Conference for: American Federal Mining Co  
Violation No. 1 of 2 N88-099-111-000(2)  
Permit: 88-107

Dear Mr. Hoops

In accordance with our Assessment Conference of May 20, 1987, I am enclosing a Consent Assessment of Civil Penalty (Payment Plan) in two copies for your signature. This consent agreement settles the assessment conference for the Notice of Violation 88-099-111-000(2) and provides for an installment agreement of \$2,200.00. A down payment of \$220.00 is to be returned within five (5) days of the date of this letter with both signed copies of the Consent Assessment of Civil Penalty (Payment Plan), to the following address:

Office of Surface Mining  
530 Gay St., S.W., Suite 408  
Knoxville, Tennessee 37902

The monthly payments of \$173.17 will be due by the first day of each month beginning July 1, 1987. Your Conference Conclusion and one copy of the Consent Assessment of Civil Penalty (Payment Plan) acknowledging receipt will be forwarded with your monthly Civil Penalty Remittance Forms upon receipt of the above mentioned check and signed copies of the consent agreement.

If you have any questions in reference to this matter, please call me at (615) 673-1234.

Sincerely,

Assessment Conference Officer

Enclosure:

2 copies - Consent Assessment of Civil Penalty (Payment Plan)

\*\*\*\*\*

personal checks timely clear the financial institution on which they are written.

4. So long as the Operator complies with the terms of this agreement, OSM will forego collection of any late payment penalties and administrative costs that may accrue because of the Operator's failure to pay the final penalty assessment in full within 30 days of the date of the final assessment, and OSM will take no action to deny, suspend, or revoke a permit on account of such failure.

5. If at any time the Operator shall fail to comply with the terms of this agreement, the entire unpaid balance of the final penalty assessment, together with any interest and all late payment penalties and administrative costs accrued thereon, shall become immediately due and payable. If said amount is not paid thereafter, OSM may exercise any and all remedies available to it, including but not limited to the initiation of court proceedings and the taking of action to deny, suspend, or revoke a permit.

6. Failure of OSM at any time to require performance of any provision of this agreement shall not affect OSM's right to require full performance thereof at any subsequent time. The waiver by OSM of any default shall not constitute the waiver of any subsequent default; and the exercise or non-exercise of any remedy by OSM shall not bar the exercise of any other remedy that may be available to OSM.

\_\_\_\_\_  
Operator

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print or type)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
City/Town, State, Zip Code

\_\_\_\_\_  
Telephone to include area code

OFFICE OF SURFACE MINING

By: \_\_\_\_\_  
Signature  
Assessment Conference Officer

\* \* \* \* \*

EXHIBIT 10 - Consent Agreement - Pay Plan

\*\*\*\*\*

RE: Veterans Coal Inc-

NOV 86-099-276-334(1)

Operator

CONSENT ASSESSMENT OF CIVIL PENALTY  
(Payment Plan)

THIS AGREEMENT is made and entered into this 7th day of November, 1986, by and between Veterans Coal Inc ("the Operator") and the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior ("OSM").

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 Operator Notice of Violation ("NOV") No. 86-099-276-334(1), charging the Operator with one or more violations of said Act and regulations at the Operator's surface coal mining operation in Anderson County, Tennessee, operated under Permit No. 88-107; and

WHEREAS OSM has proposed a civil penalty assessment in the amount of \$2,400.00 for said violation; and

WHEREAS the parties wish to settle all outstanding issues arising out of the issuance of said NOV 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 \$2,200.00 is hereby assessed for the violation cited in the above referenced NOV. This assessment is now final, and any rights the Operator may otherwise have had to contest the proposed penalty assessment are expressly waived.

2. The Operator shall pay \$220.00 as down payment, and the balance of said amount, together with interest thereon at the rate of seven (7) percent per annum, in equal monthly installments of \$173.17 each, payable on the first day of each month, beginning January 1, 1987, and continuing until said amount has been paid in full. (The amount of the final installment payment shall be adjusted to equal the amount of unpaid balance, plus any interest accrued thereon.).

3. All payments required under this agreement shall be made by personal check, certified check, or money order, made payable to "Office of Surface Mining" and mailed to:

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

Payments shall be deemed made when received, provided any

EXHIBIT 9 -Letter Sent For Full Pay

\* \* \* \* \*

Mr. Timothy J. Elf, Superintendent  
Some Creek Mining Company Inc  
PO Box 48000  
Someplace, Tennessee 37777

Re: Assessment Conference for: Some Creek Mining Co Inc  
Violation No. 2 of 2 N86-099-099-099(2)  
Permit: 2222

Dear Mr. Elf:

This confirms our conference of February 10, 1987 and settlement of above reference citation.

Attached is a Consent Assessment of Civil Penalty (Full Payment) for signature in two copies. The signed agreements should be returned within five (5) days from receipt of this letter to:

Office of Surface Mining  
530 Gay St., S.W., Suite 408  
Knoxville, Tennessee 37902

A check or money order in the amount of \$500.00 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 questions, please call me at (615) 673-1234.

Sincerely,

Assessment Conference Officer

Enclosure:

2 copies Consent Assessment of Civil Penalty (Full Payment)

\* \* \* \* \*

EXHIBIT 8 -Conference Conclusion Letter -Full Pay

\* \* \* \* \*

CONCLUSION OF CONFERENCE

Mr. W. H. Boatman, Owner  
W H Boatman Coal Company  
Route 1, Box 8444  
Anytown, Tennessee 37777

Re: Assessment Conference for: W H Boatman Coal Company  
Violation No. 1 of 1 of N86-099-087-099(1)  
Permit: OSM #25555

Dear Mr. Boatman:

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

After reviewing all of the information supplied to me at the conference and all other information available to me concerning the above violation, pursuant to 30 CFR Part 723, I am affirming 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 (615) 673-1234.

Sincerely

Assessment Conference Officer

Enclosure

cc: C. Carter  
Branch of Assessments

\* \* \* \* \*

EXHIBIT 7 - Consent Agreement - Full Pay (Continued)

\* \* \* \* \*

2. Receipt of check no. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is hereby acknowledged in full payment of said final penalty assessment (provided any personal check timely clears the financial institution on which it is written).

Black Rock Mining Co Inc  
Operator

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print or type)

\_\_\_\_\_  
Title

OFFICE OF SURFACE MINING

By: \_\_\_\_\_  
Signature

Assessment Conference Officer

\* \* \* \* \*

EXHIBIT 7 - Consent Agreement - Full Pay

\* \* \* \* \*

E: Black Rock Mining Co Inc : NOV 86-099-100-099(2)  
Violation 2 of 2

\_\_\_\_\_  
Operator

CONSENT ASSESSMENT OF CIVIL PENALTY  
(Full Payment)

THIS AGREEMENT is made and entered into this 10th day of February, 1987, by and between Black Rock Mining Co Inc ("the Operator") and the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior ("OSM").

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 Operator Notice of Violation ("NOV") No. 86-099-100-099(2), charging the Operator with one or more violations of said Act and regulations at the Operator's surface coal mining operation in Anyole County, Tennessee, operated under Permit No. 2222; and

WHEREAS OSM has proposed a civil penalty assessment in the amount of \$1,500.00 for said violation; and

WHEREAS the parties wish to settle all outstanding issues arising out of the issuance of said NOV 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 \$500.00 is hereby assessed for the violation cited in the above referenced NOV. This assessment is now final, and any rights the Operator may otherwise have had to contest the proposed penalty assessment are expressly waived.

EXHIBIT 6B -Conference Conclusion Letter -(No Settlement -  
Full Pay Not Returned) (Continued)

\* \* \* \* \*

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--OSMRE" and sent to:

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

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 which is not answered by this letter, you may call me at (615) 673-1234.

Sincerely

Assessment Conference Officer

Enclosure  
cc: C. Carter  
Branch of Assessments

\* \* \* \* \*

EXHIBIT 6B -Conference Conclusion Letter -(No Settlement -  
Full Pay Not Returned)

\* \* \* \* \*

CONCLUSION OF CONFERENCE

Mr. John D. Sanders, Engineer  
Outplace Coal Corporation  
P.O. Box 555  
Anytown, Tennessee 37870

Re: Assessment Conference for: Outplace Coal Corp  
Violation No. 1 of 1 of N86-099-171-020(1)  
Permit EWN 86-86-86

Dear Mr. Sanders:

Reference is made to the letter to you dated January 8, 1987. As the Consent Assessment of Civil Penalty (Full Payment) for the above violation has not been signed and returned to this office, this letter formally concludes the conference relating to the above violation.

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

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

If you wish a formal hearing to contest the revised or affirmed assessments, you must submit a petition for review within 15 days after the date you receive this letter to:

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

Your petition must be accompanied by a check or money order payable to "Assessment Office--OSMRE" in an amount equal to the total of the revised or addressed assessments 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 assessments, you may forfeit your right to a hearing. To assure proper credit for your payment, you must note on your check or money order the violations for which the contested assessments are being made.

EXHIBIT 6A-Conference Conclusion Letter -(No Settlement -  
Pay Plan Not Returned, Continued)

\* \* \* \* \*

check or money order the violations for which the contested assessments are 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 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--OSMRE" and sent to:

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

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 which is not answered by this letter, you may call me at (615) 673-5126.

Sincerely

Assessment Conference Officer

Enclosure

cc: C. Carter  
Branch of Assessments

\* \* \* \* \*

EXHIBIT 6A - Conference Conclusion Letter - (No Settlement -  
Pay Plan Not Returned)

\* \* \* \* \*  
CONCLUSION OF CONFERENCE

Mr. John J. Jones, President  
ABC Coal Company  
Route 1, Box 343  
Someplace, Tennessee 37777

Re: Assessment Conference for: ABC Coal Company  
Violation No. 1 of 1 of N86-099-099-099(1) Permit: 88-888

Dear Mr. Jones:

Reference is made to my letter to you dated November 31, 1986. As the Consent Assessment of Civil Penalty (Payment Plan) for the above violation has not been signed and returned to this office, this letter formally concludes the conference relating to the above violation.

After reviewing all of the information supplied to me at the conference and all other information available to me concerning the above violation, pursuant to 30 CFR Part 723, I am affirming 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 the violation for which the conference was held and reflects changes, if any, resulting from the conference. It also shows the point values assigned for the proposed assessment and the point values assigned as a result of the conference.

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

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

Your petition must be accompanied by a check or money order payable to "Assessment Office--OSMRE" in an amount equal to the total of the 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. To assure proper credit for your payment, you must note on your

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 for your payment, you must note on your check or money order the violations for which the contested assessments are 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 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--OSMRE" and sent to"

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

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 which is not answered by this letter, you may call me at (615) 673-1234.

Sincerely,

Assessment Conference Officer

Enclosure

cc: C. Carter  
Branch of Assessments

\* \* \* \* \*

EXHIBIT 6 - Conference Conclusion Letter (No Settlement)

\* \* \* \* \*

CONCLUSION OF CONFERENCE

Mr. Bert L. Smart, President  
Lazy River Fuels Inc  
1028 N. Broadway, Suite 7  
Anytown, Arkansas 72301

Re: Assessment Conference for: Lazy River Fuels Inc  
Violation Nos. 1 & 2 of 2 of C86-099-099-006(2)  
Permit: 2222222

Dear Mr. Smart:

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

After reviewing all of the information supplied to me at the conference and all other information available to me concerning the above violations, pursuant to 30 CFR Part 723, I am affirming the assessment for the above mentioned violations 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.

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

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

In your petition, you may include a request for a formal hearing on the fact of the violation if you have not previously been granted or denied such a hearing.

Your petition must be accompanied by a check or money order payable to "Assessment Office--OSMRE" in an amount equal to the total of the revised or affirmed assessment for which you are

EXHIBIT 5 - Conference Conclusion Letter (No Penalty Assessed)

\*\*\*\*\*

CONCLUSION OF CONFERENCE

Mr. Michael W. Boats, Attorney  
Ships & Boats  
600 Time Building  
Anytown, Tennessee 37405

Re: Assessment Conference for: Rich Energy Inc  
Violation No. 1 & 2 of 2 of N86-099-179-021(2)  
Permit: 2222

Dear Mr. Boats

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

After reviewing all of the information supplied to me at the conference and all other information available to me concerning the above violations, pursuant to 30 CFR Part 723, as shown on the attached Assessment Conference Report, no penalty is being assessed for the violations.

Sincerely

Assessment Conference Officer

Enclosure

cc William H. Rich, President  
Rich Energy Inc  
147-C N. Myrtle Street  
Anyton, Tennessee 37405  
C. Carter  
Branch of Assessments

\*\*\*\*\*

EXHIBIT 4 - Conference Conclusion Letter (Vacated -  
No Penalty Assessed)

\* \* \* \* \*

CONCLUSION OF CONFERENCE

Mr. Frank T. Martin, President  
Seven Dwarfs Coal Sales Inc  
302 Mills Road  
Anytown, Florida 33480

Re: Assessment Conference for: Seven Dwarfs Coal Sales Inc  
Violation No. 1 of 1 of C86-099-012-004(1)  
Permit: 88-A28

Dear Mr. Martin:

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

After reviewing all of the information available to me concerning the above violation, pursuant to 30 CFR Part 723, I am revising the assessment for the above mentioned violation, as shown on the enclosed Assessment Conference Report. As the violation was vacated, there will be no civil penalty.

If you have any questions which are not answered by this letter, you may call me at (615) 673-1234.

Sincerely,

Assessment Conference Officer

Enclosure

cc: C. Carter  
Branch of Assessments

\* \* \* \* \*

EXHIBIT 3 - Conference Conclusion Letter (No Show)-(Continued)

\*\*\*\*\*  
amount less than the proposed assessment, you may forfeit your right to a hearing. To assure proper credit for your payment, you must note on your check or money order the violations for which the contested assessments are 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 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--OSMRE" and sent to:

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

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 which is not answered by this letter, you may call me at (615) 673-1234.

Sincerely

(name)  
Assessment Conference Officer

Enclosure

cc: C. Carter  
Branch of Assessments

\*\*\*\*\*

EXHIBIT 3 -Conference Conclusion Letter (No Show)

\* \* \* \* \*

CONCLUSION OF CONFERENCE

Mr. Bert L. Jones, President  
Jones & Smith Fuels Inc  
1028 N. Broadway, Suite 7  
Anytown, Arkansas 72301

Re: Assessment Conference for: Jones & Smith Fuels Inc  
Violation Nos. 1 & 2 of 2 of C86-099-099-006(2)  
Permit: 2280000

Dear Mr. Jones

Since you did not appear at the conference as scheduled, this letter formally concludes the conference relating to the above violations. Pursuant to 30 CFR Part 723, I am affirming the assessment for the above mentioned violations, 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.

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

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

In your petition, you may include a request for a formal hearing on the fact of the violation if you have not previously been granted or denied such a hearing.

Your petition must be accompanied by a check or money order payable to "Assessment Office--OSMRE" in an amount equal to the total of the revised or addressed 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

EXHIBIT 2 - Conference Conclusion Report (Page 4 of 4)

\*\*\*\*\*

CONFERENCE CONCLUSION REPORT  
(Continued)

Page \_\_\_ of \_\_\_

Company Name:

Permit No.

Citation No. \_\_\_\_\_ (\_\_\_)

Violation \_\_\_ of \_\_\_

3. Narrative: (Continued)

\*\*\*\*\*

NOTES: Page 4 will be used only if needed. If there is more than one violation in the citation the pages should be numbered to reflect the additional violations. The narrative pages will normally not be sent to the operator.



EXHIBIT 2 - Conference Conclusion Report (Page 3 of 4)

\*\*\*\*\*

ASSESSMENT CONFERENCE REPORT  
(Continued)

Page 2A of 2

Company Name: Jones & Smith Fuels Inc

Permit No: 2280000

Citation No: C86-099-099-006(1)

Violation 1 of 1

3. Narrative:

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

As the violation was unabated there was no settlement possible. Operator was apprised of his options and Operator stated the unabated violation was being resolved. Operator will either file an appeal or will work with Collection in reference to a settlement for the penalty.

\*\*\*\*\*

This is the inspector's verbal report of what occurred. Look for the who, what, where, when and how much. Read the report and read even in between the lines to determine the extent of damage or potential damage. Evaluate this report against the Assessment package and the other documents within the Enforcement package.

**INSPECTION REPORT**

Page 1 of 2

**Permittee:** Anyole Coal Company  
P. O. Box  
Jellico, TN 37762

**County:** Campbell

**Operator:** 88-A03

**Permit No.:** 12/10/86

**Date of Inspection:** Partial

**Type of Inspection:**

**Inspector:** Jeff 9

**Action Taken:** Issued NOV 86-091-000-001  
containing one violation for  
failure to meet effluent  
limitations

**Discussion:**

A partial inspection was completed on this site on 12/10/86. The permittee was represented on site during this inspection.

Mining occurred within permit boundaries. A permit sign is present as required. Diversions are stable and function as designed. All three basin subbankments are stable and well vegetated. Haul roads are well maintained. All three basins (001, 002, and 003) were discharging during this inspection. Field tests revealed that basin discharges from 002 and 003 were in compliance. Discharge from basin 001 was field tested and found to exceed effluent limitations for pH. Samples were collected and taken to a lab for analysis. Laboratory analysis indicated that basin 001 was discharging water with a pH of 3.73. This discharge resulted in the issuance of Notice of Violation No. 86-91-000-001 containing one violation for failure to meet effluent limitations. Laboratory analysis from basin 001 is

What are the inspector's  
comments about the  
violation

This is the second page of the citation. A page is made for each separate violation within the citation. The information should be cross-checked against the data in the Assessment package to assure the two are consistent.

U.S. DEPARTMENT OF THE INTERIOR Office of Surface Mining Reclamation and Enforcement		MON. NO. 86-091-000-001 Violation Number
NOTICE OF VIOLATION (CONTINUATION)		
NATURE OF PERMIT CONDITION VIOLATED, PRACTICE OR VIOLATION		
FAILURE TO MEET EFFLUENT LIMITATIONS FOR WATER DISCHARGES FROM AREAS DISTURBED BY SURFACE MINING ACTIVITIES.		←
PROVISION(S) OF THE REGULATIONS, ACT OR PERMIT VIOLATED		
SEC. 816.42 OF 30 CFR AND NPDES PERMIT # TN0052451		←
PORTION OF THE OPERATION TO WHICH NOTICE APPLIES		
SEDIMENT BASIN 001		←
CORRECTIVE ACTION REQUIRED (Including Interim Steps, If Any)		
TREAT THE WATER IN BASIN 001 AS NECESSARY IN ORDER TO ACHIEVE COMPLIANCE WITH ALL APPLICABLE EFFLUENT LIMITATIONS.		←
TIME FOR ABATEMENT (Including Time for Interim Steps, If Any)		
FRIDAY, DECEMBER 17, 1986 AT 10:00 AM		←

What was the violation

What provision was violated

What portion or ext. does the violation cover

What remedial action is required

What period of time was allowed for abatement

This is the front page of the citation. Careful review should be made to ascertain that the correct organization is identified, proper service has been executed, and any other discrepancy that might be uncovered.

U.S. DEPARTMENT OF THE INTERIOR Office of Surface Mining Reclamation and Enforcement <b>NOTICE OF VIOLATION</b> Permanent Regulatory Procedures				1. Notice of Violation Number 86-091-000-001 TV 1	
2. Name <input checked="" type="checkbox"/> Permittee <input type="checkbox"/> No Permit ANYOLE COAL COMPANY			Originating Office Address OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828		
3. Mailing Address P.O. Box 000, Jellico, TENN. 37762			Telephone Number (615) 632-1718		
4. Name of Mine <input type="checkbox"/> Surface <input checked="" type="checkbox"/> Other (Specify) MORE Tipple <input type="checkbox"/> Underground Tipple			5. Telephone Number (615) 555-7225		
6. County CAMPBELL		State TENNESSEE		7. Operator's Name (if other than permittee) SAME AS ABOVE	
8. Mailing Address SAME AS ABOVE			9. Date of Inspection DECEMBER 10, 1986		
10. Time of Inspection From 12:10 <sup>PM</sup> To 12:45 <sup>PM</sup>			11. State Permit Number 88-A03		
12. NPDES Number TN005555		13. MSHA ID Number 40-00000		14. OSM Mine Number	
<p>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.</p> <p>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.</p> <p>THE UNDERSIGNED AUTHORIZED REPRESENTATIVE HEREBY FINDS THAT THIS NOTICE <input checked="" type="checkbox"/> DOES NOT <del>REQUIRE</del> REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you <del>are</del> are not entitled to an informal public hearing on request, within 30 days after service of this notice (30 CFR 843.15).</p> <p>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.</p>					
<b>IMPORTANT—Please Read Information on the Back of this Page</b>					
15. Print Name of Person Served ANYOLE COAL COMPANY			18. Date of Service 12-10-86 HAND-SERVED		
16. Print Title of Person Served LEOPD SMITH, MANAGER			19. Print Name of Authorized Representative JEFF		
17. Signature of Person Served [Signature]			20. Signature of Authorized Representative [Signature]		ID Number 000

Data should be cross-checked against that shown on the Assessment Package

Verify that service was executed and citation is valid

Note the name of the inspector in case questions arise

This is a log sheet used by some enforcement offices to monitor citations. A form of this type can be extremely useful in identifying the number of modifications and also the dates involved. If this type of document is not available, other means have to be developed to verify service date, abatement dates after modifications and etc.

NOV #	COMPANY NAME	INSPECTOR'S NAME	DATE MAILED	DATE SIGNED	DATE OF ABATEMENT	MOD. VAC. TERM	EXT. CO ISSUED
86-091-001-006	Anyole Coal Company, Hoke Twp, N.C.	Doug	08-05-86	8-7-86	08-10-86	12/21/86 1/1/87	8/16/86
86-091-000-001		Jeff	12-10-86	Hand-Served	12/23/86 12-19-86	7/20/87 1/1/87	8/16/86

Do the dates and actions correspond to the citation and assessment package

EXHIBIT 2 to Table E (History Sheet)

This form is to be used to record activities and events occurring during the conference process. In the event of transfer of responsibility it will allow continuation without repeating actions. The notations should be brief, concise and legible to allow monitoring of case actions.

HISTORY SHEET

Company: ANYTLE COAL COMPANY		Citation(s) MS6-091-000-001(1)
Date	Actions	
2-19-87	Received assessment package from BCPA - Package reviewed and appears to be in order. <i>PT</i>	
2-20-87	Assigned to SS - to secure citation documentation <i>PT</i>	
2-20-87	Contacted Morris Office to secure modification and termination which were not in enforcement file. Logsheet and NOV were found in enforcement file. <i>SS</i>	
3-3-87	Received copy of modification and termination - Appears ready for conference. Case returned to PT for assignment to a Conference Officer <i>SS</i>	
3-3-87	Case assigned to BK <i>PT</i>	
3-4-87	Reviewed assessment and citation package - no noted discrepancies - Can be scheduled for conference <i>BK</i>	
3-4-87	TC - Mr. Smith is aware of conference procedure- Conference scheduled for 3-11-87 at 10:00 a.m. <i>BK</i>	
	Appointment letter sent to Mr. Smith, copy posted on bulletin board and a copy was sent to Morris for posting on their board. <i>BK</i>	
3-11-87	Operator appeared for conference. Presented affidavit and awarded good faith. Operator agreed to revised assessment, signed consent agreement and rendered full payment.	
	Case was completed and submitted for final review. <i>BK</i>	

This page is not sent to the operator but is included in the assessment package sent to the Conference Officer. Evaluation should be made to see if the assessment package and this rationale corresponds with the inspector's statement(s) and is in line with general assessment guidelines.

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

Page 1 of 1

Assessment Explanation

34

ROW # 86-91-000-1

CO # \_\_\_\_\_

Name of Company ANYOLE COAL COMPANY

Violation # 1 of 1

History of previous violations:

Seriousness: (either A or B)

A. (1) Probability of occurrence: 15

WATER POLLUTION HAS OCCURRED. OPERATOR HAS NOT MAINTAINED DISCHARGE OF SEDIMENT BASIN. DISCHARGE HAD A PH OF 3.73. UPSTREAM SAMPLE WAS 6.89 PH, DOWNSTREAM WAS 6.60 PH

(2) Extent of actual or potential damage: 9

DAMAGE EXTENDS OFF PERMIT IN THE FORM OF WATER POLLUTION. PH OF STREAM WAS LOWERED.

Do the points correspond to those reflected on page 5

B. Obstruction to enforcement:

Negligence: ORDINARY NEGLIGENCE 12

Good Faith: WILL BE CONSIDERED AFTER COMPLETE INFORMATION IS RECEIVED

Assessor's identifying number-  
In case of questions or problems the  
person making the assessment can be  
contacted

OSM 723-6  
Revised 09/17/79

Page 1 of 1

Assessment Worksheet  
(See Part 723)

34

MCN # 86-91-000-1

CO # \_\_\_\_\_

PERMIT # 68-AdB

Name of Company ANYOLE COAL COMPANY

Violation # 1 of 1 POINTS

1. History of previous violations 0

2. Seriousness (either A or B)

A. (1) Probability of occurrence 15

(2) Extent of potential or actual damage 9

B. Obstruction to enforcement \_\_\_\_\_

Total Seriousness \_\_\_\_\_

3. Negligence \_\_\_\_\_

4. Good Faith (Will be considered after complete information is received) \_\_\_\_\_

TOTAL POINTS \_\_\_\_\_

ASSESSMENT 36

Violation # \_\_\_\_\_ of \_\_\_\_\_ POINTS

1. History of previous violations \_\_\_\_\_

2. Seriousness (either A or B)

A. (1) Probability of occurrence \_\_\_\_\_

(2) Extent of potential or actual damage \_\_\_\_\_

B. Obstruction to enforcement \_\_\_\_\_

Total Seriousness \_\_\_\_\_

3. Negligence \_\_\_\_\_

4. Good Faith (Will be considered after complete information is received) \_\_\_\_\_

TOTAL POINTS \_\_\_\_\_

ASSESSMENT \$ \_\_\_\_\_

Are these points in line with assessment guidelines

Is the mathematical calculation correct and does the point count correspond to the assessed dollar amount

OSM 723-5  
Revised 7/10/84

Page 1 of 1

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

NOTICE OF PROPOSED ASSESSMENT

Notice of Violation # 86-91-000-1

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

NOV received: 12/10/86

<u>Violation No.</u>	<u>Amount of Proposed Assessment</u>
<u>1</u> of <u>1</u>	<u>\$ 1,600.00</u>
<u>    </u> of <u>    </u>	<u>                    </u>
<u>    </u> of <u>    </u>	<u>                    </u>
<u>    </u> of <u>    </u>	<u>                    </u>
<u>    </u> of <u>    </u>	<u>                    </u>
<u>    </u> of <u>    </u>	<u>                    </u>
<u>    </u> of <u>    </u>	<u>                    </u>
<b>Total Proposed Assessment</b>	<b>\$ <u>1,600.00</u></b>

Does this amount agree with page 5

Is the total correct

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

This form is sent blank to the operator and if a conference is desired the form is completed and returned to BCPA.

OSM 723-4  
Revised 2-10-84

FEB 2 1987  
(Date)

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

Dear Sirs:

Pursuant to 30 CFR §845.18, I request a conference to review  
the proposed assessment for violations of Notice of Violation(s) #  
# 86-91-000-1 and /or Cessation Order(s) #

My telephone number is 615) 555-7125 ← Telephone number of the  
555-4674 requestor

Lloyd Smith  
(Signature)

LLOYD SMITH ← Name and title of the  
(Name and Title) MGGR. person requesting conference

ANYOLE Coal Co  
(Name of Permittee or Operator)

P.O. Box 000 JENICO TN 37762 ← Mailing address of the  
(Address of Permittee or Operator) requestor

Provided your request is received within 15 days as provided in ← 15 day grace period has been  
30 CFR §845.18, you will be contacted by a conference officer in added thus allowing 30 days  
order to arrange the time and place of the conference. to request conference

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

Anyole Coal Company ← Company name and date of initial letter  
January 28, 1987

→ This letter is sent after the Branch of Civil Penalty Assessments (BCPA) receives a copy of the citation and has completed the Notice of Proposed Assessment (NOPA). With this letter and the NOPA (pages 4 & 5), there is a blank request for conference form (see page 3). If the operator requests a conference, this is returned, evaluated and acceptance or denial is given.



## United States Department of the Interior

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

January 28, 1987

Anyole Coal Company  
P.O. Box  
Jalisco, TN. 37762

**RE: CIVIL PENALTIES FOR VIOLATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, (SMCRA), 30 U.S.C. 1201 et seq.**

Enclosed is a notice of proposed civil penalty assessment with respect to certain violations for which a notice of violation (NOV) or a cessation order (CO) was issued to you.

Please read this letter very carefully. It contains information concerning requirements for payment of civil penalty assessments which must be followed to avoid additional cost, and requirements for obtaining informal and formal review of the penalty. If you have any questions, you may call the Branch of Civil Penalty Assessments at (202) 653-2904.

### I. PAYMENT PROCEDURES

Unless you request an assessment conference or administrative hearing in accordance with the instructions set forth below, the proposed civil penalty assessment will become a Final Order within 30 days of receipt of this letter. Payment must be received by the Office of Surface Mining (OSM), Branch of Collections, within 30 days after the assessment becomes a Final Order or the debt will be considered delinquent and the following sequence of charges will be applied to your account:

- A. Interest calculated at the current Treasury rate will be assessed from the day when payment of the civil penalty was first due.
- B. Administrative costs incurred in the processing and handling of the delinquent debt, such as the cost of referring the account to a debt collection company.
- C. If any portion of the civil penalty remains unpaid 90 days after the assessment is first due, you will be subject to a 6 percent penalty 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.

Is this the operator or person requesting the conference (See page 3)



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

FEB 13 1987

*Permit 58-A03*

Is the citation number consistent throughout this package

Mr. Lloyd Smith  
Manager  
Anyole Coal Company  
P.O. Box 000  
Jellico, TN 37762

RECEIVED

87 FEB 19 10:39

OSM-KNOXVILLE  
FIELD OFFICE

The conference must be held within 60 days of date received or the termination date of the citation which ever is later

CONFERENCE REQUEST APPROVAL

RE: NS6-91-000-1(1)

This is in response to your letter(s) dated February 2, 1987  
in which you requested a conference. Your request has been granted  
and is being forwarded to the appropriate OSM office for assignment.  
A Conference Officer will contact you to schedule the conference.  
If you have any questions or need assistance, please call the  
appropriate Conference Officer listed on the attachment to this letter.

Note that it is specified contact will be made to schedule the conference

Sincerely,

Robert B. Campbell, Chief  
Branch of Civil Penalty Assessments

Attachment

NOTE: This letter is sent to the requestor and a copy is sent to the appropriate office that will conduct the conference.

pages or documents. The original pages or documents are not to be discarded.

Case files should be numbered or labeled in a manner that allows ease of access. A computer tracking system or other means should be developed to allow ready research or identification of conference cases. The files are to be secured and available only to persons authorized to access the files. A sign-out system should be developed and used so the location of conference files is known at all times.

## TABLE E

### Case File

This table is to depict documents and procedures in a conference and to reflect documents contained in a typical case file. The case file must be complete and documented for all actions and events that occurred during the informal conference process. It should be noted that each case is unique and therefore the documents and procedures will vary depending on the circumstances of the particular case. The documents shown have been reduced and notations made on the sides to explain steps or events. Throughout the informal conference, Conference Officers must scrutinize and clarify noted discrepancies or questionable aspects. While the Conference Officer is neither Assessor nor Inspector a careful review should be made to ascertain that errors in procedure or guidelines were not made. If an error or questionable procedure is noted the appropriate person should be contacted and the problem resolved without creating animosity in the relationship between branches.

Exhibit 1 is the Conference Approval Letter and the Notice of Proposed Assessment (NOPA) and is the initial phase of a case. This will be referred to as the assessment package.

Exhibit 2 is a history sheet, prepared and made a part of the case file. Brief notations of all actions should be made.

Exhibit 3 will be referred to as the enforcement package. Once the assessment package has been reviewed and appears in order, copies of the citation, modifications, termination and other enforcement documents need to be secured. A rapport needs to be established with each office within the Conference Officer's jurisdiction so that copies or documents can be readily obtained. This should be done by contacting the chief or official in charge of the office and establishing a liaison person to be contacted to obtain future documentation. This will preclude having to go through all the channels in future needs but will allow going directly to the person that can furnish requested materials.

Exhibit 4 contains the documents generated in the conference process and will be referred to as the conference package. When all necessary documents of the enforcement package are received and reviewed the Conference Officer is ready to start the conference process and generate conference documents.

All of the documents in exhibits 1 through 4 constitute items found in a typical case file. The case file must be complete and self explanatory without having to research multiple sources or file components. Once completed the case file will not be modified or changed unless the rationale for modification or change is fully noted and explained. In case of a modification or addendum additional documents should be prepared clearing outlining that the new documents supersede or replace original

CIVIL PENALTY REMITTANCE SLIP (1)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

FIRST PAYMENT DUE DATE: APRIL 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$194.47

TO BE APPLIED TO INTEREST: \$2.31

PRINCIPAL BALANCE REMAINING: \$2,055.53

---

CIVIL PENALTY REMITTANCE SLIP (4)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

FOURTH PAYMENT DUE DATE: JULY 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$186.37

TO BE APPLIED TO INTEREST: \$10.41

PRINCIPAL BALANCE REMAINING: \$1,502.31

-----  
CIVIL PENALTY REMITTANCE SLIP (3)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

HIRD PAYMENT DUE DATE: JUNE 1

PAYMENT AMOUNT: \$196.78 -

TO BE APPLIED TO PRINCIPAL: \$184.85

TO BE APPLIED TO INTEREST: \$11.93

PRINCIPAL BALANCE REMAINING: \$1,688.68

-----  
CIVIL PENALTY REMITTANCE SLIP (2)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

SECOND PAYMENT DUE DATE: MAY 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$182.00

TO BE APPLIED TO INTEREST: \$14.78

PRINCIPAL BALANCE REMAINING: \$1,873.53  
-----

CIVIL PENALTY REMITTANCE SLIP (7)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

SEVENTH PAYMENT DUE DATE: OCTOBER 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$189.83

TO BE APPLIED TO INTEREST: \$6.95

PRINCIPAL BALANCE REMAINING: \$936.87

-----  
CIVIL PENALTY REMITTANCE SLIP (6)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

SIXTH PAYMENT DUE DATE: SEPTEMBER 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$188.40

TO BE APPLIED TO INTEREST: \$8.38

PRINCIPAL BALANCE REMAINING: \$1,126.70

-----  
CIVIL PENALTY REMITTANCE SLIP (5)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

FIFTH PAYMENT DUE DATE: AUGUST 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$187.21

TO BE APPLIED TO INTEREST: \$9.57

PRINCIPAL BALANCE REMAINING: \$1,315.10  
-----

CIVIL PENALTY REMITTANCE SLIP (10)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

TENTH PAYMENT DUE DATE: JANUARY 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$193.25

TO BE APPLIED TO INTEREST: \$3.53

PRINCIPAL BALANCE REMAINING: \$360.63

-----  
CIVIL PENALTY REMITTANCE SLIP (9)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

NINTH PAYMENT DUE DATE: DECEMBER 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$192.18

TO BE APPLIED TO INTEREST: \$4.60

PRINCIPAL BALANCE REMAINING: \$553.88

-----  
CIVIL PENALTY REMITTANCE SLIP (8)  
COMPANY NAME: ABC COAL COMPANY

CITATION NUMBER: C86

REMITTER NAME(If Different):

EIGHTH PAYMENT DUE DATE: NOVEMBER 1

PAYMENT AMOUNT: \$196.78

TO BE APPLIED TO PRINCIPAL: \$190.81

TO BE APPLIED TO INTEREST: \$5.97

PRINTCIPAL BALANCE REMAINING: \$746.06  
-----

Note: This print-out is to be furnished to the Operator and the Operator advised to cut out and attach one of these slips to each payment so that the payment will be correctly applied.

\*\*\*\*\*

PLEASE CUT OUT AND ATTACH TO YOUR PAYMENT THE APPROPRIATE PENALTY REMITTANCE SLIP TO ASSURE CORRECT APPLICATION AND POSTING OF PAYMENTS

MAKE CHECKS PAYABLE TO 'Office of Surface Mining' AND  
SEND TO : Office of Surface Mining  
Reclamation and Enforcement  
P.O. Box 360292 M  
Pittsburgh, PA 15251

SPECIAL NOTE: PAYMENTS RECEIVED AFTER THE DUE DATE WILL BE SUBJECT TO ADDITIONAL INTEREST CHARGES.

-----  
CIVIL PENALTY REMITTANCE SLIP (12)  
COMPANY NAME: ABC COAL COMPANY CITATION NUMBER: C86  
REMITTER NAME(If Different):  
TWELVTH PAYMENT DUE DATE: MARCH 1  
PAYMENT AMOUNT: \$167.11  
TO BE APPLIED TO PRINCIPAL: \$166.15  
TO BE APPLIED TO INTEREST: \$0.96  
PRINCIPAL BALANCE REMAINING: \$0.00

-----  
CIVIL PENALTY REMITTANCE SLIP (11)  
COMPANY NAME: ABC COAL COMPANY CITATION NUMBER: C86  
REMITTER NAME(If Different):  
ELEVENTH PAYMENT DUE DATE: FEBRUARY 1  
PAYMENT AMOUNT: \$196.78  
TO BE APPLIED TO PRINCIPAL: \$194.48  
TO BE APPLIED TO INTEREST: \$2.30  
PRINCIPAL BALANCE REMAINING: \$166.15  
-----



SEVENTH PAYMENT DUE: OCTOBER 1  
PAYMENT AMOUNT \$196.78  
AMOUNT APPLIED TO INTEREST \$6.95  
AMOUNT APPLIED TO PRINCIPAL \$189.83  
PRINCIPAL BALANCE AFTER SEVENTH PAYMENT \$936.87

EIGHTH PAYMENT DUE: NOVEMBER 1  
PAYMENT AMOUNT \$196.78  
AMOUNT APPLIED TO INTEREST \$5.97  
AMOUNT APPLIED TO PRINCIPAL \$190.81  
PRINCIPAL BALANCE AFTER EIGHTH PAYMENT \$746.06

NINTH PAYMENT DUE: DECEMBER 1  
PAYMENT AMOUNT \$196.78  
AMOUNT APPLIED TO INTEREST \$4.60  
AMOUNT APPLIED TO PRINCIPAL \$192.18  
PRINCIPAL BALANCE AFTER NINTH PAYMENT \$553.88

TENTH PAYMENT DUE: JANUARY 1  
PAYMENT AMOUNT \$196.78  
AMOUNT APPLIED TO INTEREST \$3.53  
AMOUNT APPLIED TO PRINCIPAL \$193.25  
PRINCIPAL BALANCE AFTER TENTH PAYMENT \$360.63

ELEVENTH PAYMENT DUE: FEBRUARY 1  
PAYMENT AMOUNT \$196.78  
AMOUNT APPLIED TO INTEREST \$2.30  
AMOUNT APPLIED TO PRINCIPAL \$194.48  
PRINCIPAL BALANCE AFTER ELEVENTH PAYMENT \$166.15

TWELVTH PAYMENT DUE: MARCH 1  
PAYMENT AMOUNT \$167.11  
AMOUNT APPLIED TO INTEREST \$0.96  
AMOUNT APPLIED TO PRINCIPAL \$166.15  
PAYMENT PLAN WILL BE PAID IN FULL AFTER THIS PAYMENT

Note: The print-out below should be filed with the case file. It reflects the payments and the application of the funds.

\*\*\*\*\*

COMPANY NAME: ABC COAL COMPANY  
STREET ADDRESS: BOX 123  
TOWN/CITY, STATE, ZIP CODE: ONEIDA, TN 37841  
PERSON TO BE CONTACTED: JOHN JONES  
TELEPHONE NUMBER: (615) 777-8888

CITATION NUMBER: C86

TOTAL AMOUNT SETTLED: \$2,500.00

DOWN PAYMENT AMOUNT RENDERED: \$250.00

DATE SETTLED: 02-25-1987

PRINCIPAL BALANCE: \$2,250.00

INTEREST RATE OF THIS PAY AGREEMENT: 7.5 %

FIRST PAYMENT DUE: APRIL 1

PAYMENT AMOUNT	\$196.78	
AMOUNT APPLIED TO INTEREST	\$2.31	
AMOUNT APPLIED TO PRINCIPAL	\$194.47	
PRINCIPAL BALANCE AFTER FIRST PAYMENT:		\$2,055.53

SECOND PAYMENT DUE: MAY 1

PAYMENT AMOUNT	\$196.78	
AMOUNT APPLIED TO INTEREST	\$14.78	
AMOUNT APPLIED TO PRINCIPAL	\$182.00	
PRINCIPAL BALANCE AFTER SECOND PAYMENT		\$1,873.53

THIRD PAYMENT DUE: JUNE 1

PAYMENT AMOUNT	\$196.78	
AMOUNT APPLIED TO INTEREST	\$11.93	
AMOUNT APPLIED TO PRINCIPAL	\$184.85	
PRINCIPAL BALANCE AFTER THIRD PAYMENT		\$1,688.68

FOURTH PAYMENT DUE: JULY 1

PAYMENT AMOUNT	\$196.78	
AMOUNT APPLIED TO INTEREST	\$10.41	
AMOUNT APPLIED TO PRINCIPAL	\$186.37	
PRINCIPAL BALANCE AFTER FOURTH PAYMENT		\$1,502.31

FIFTH PAYMENT DUE: AUGUST 1

PAYMENT AMOUNT	\$196.78	
AMOUNT APPLIED TO INTEREST	\$9.57	
AMOUNT APPLIED TO PRINCIPAL	\$187.21	
PRINCIPAL BALANCE AFTER FIFTH PAYMENT		\$1,315.10

SIXTH PAYMENT DUE: SEPTEMBER 1

PAYMENT AMOUNT	\$196.78	
AMOUNT APPLIED TO INTEREST	\$8.38	
AMOUNT APPLIED TO PRINCIPAL	\$188.40	
PRINCIPAL BALANCE AFTER SIXTH PAYMENT		\$1,126.70

May 28, 1987

Exhibit 20 - Computerized Payment Plan (Continued)

l. Date settled (julian date)

m. Interest rate

n. Twelve (12) payment dates (input using julian dates - see 2. below).

2. Government calendars normally reflect the julian dates. For input into the computer the settlement and payment dates must be converted to julian date. Progressive payments should be input with successively larger julian date numbers. Below is a list of the julian dates for the first day of each month.

a. January 1	1 or 366 or 731
b. February 1	32 or 397 or 762
c. March 1	60 or 425
d. April 1	91 or 456
e. May 1	121 or 486
f. June 1	152 or 517
g. July 1	182 or 547
h. August 1	213 or 578
i. September 1	244 or 609
j. October 1	274 or 639
k. November 1	305 or 670
l. December 1	335 or 700

3. The following is a computer print-out for a typical payment plan. The plan was for an amount settled of \$2,500.00 and a down payment of 10% or \$250.00 - (see Appendix).

Exhibit 20 - Computerized Payment Plan

A program has been designed to compute and print payment plans. A copy of the computer program can be obtained by contacting the Conference Program Manager. The payment plan is designed to use the current applicable interest rate when the payment plan is executed. There are input items required and when the data is input the computer will compute payments and print the payment plan. The program is designed to compute the number of days between payments and the resultant interest due. Julian calendar dates are to be used for the date the assessment was settled and the payment dates.

Payments are always to be made on the first day of each month. In order to allow necessary time for processing of paperwork you should allow at least thirty (30) days between the settlement date and the first payment date. If no down payment is to be rendered than the initial payment should be the first of the following month regardless of the number of days involved.

Once the required data is input the computer will print three separate print-outs. The first is for the case file and will reflect payments and their application to principal, interest, and the unpaid balance after payment. The second print-out is a spread sheet for the operator's records to monitor the payment plan. The third print-out is also for the operator and is the remittance slips to accompany each payment.

1. The data listed below has to be input into the computer for the payment plan:

- a. Company name
- b. Company street address or post office box
- c. Town or city
- d. State (Use two letter designation)
- e. Company zip code
- f. Name of the contact person for the payment agreement
- g. Telephone number to include the area code
- h. Citation number
- i. Total amount settled
- j. Down payment amount rendered
- k. Date settled (actual date)



Company Name

Citation #

Conference Officer

The following questions apply to those conferences in which the operator paid the revised penalty in full or signed a payment agreement. If these did not occur relative to the conference, do not include this sheet.

Manager's  
Concurrence

Yes

No

Rater's  
Concurrence  
(Initials)

- |       |     |   |       |       |       |
|-------|-----|---|-------|-------|-------|
| _____ | 9.  | A copy of the check and/or abstract and the signed Consent Assessment of Civil Penalty Agreement (Full Payment) are included in the report when the penalty has been paid as the result of the conference.                | _____ | _____ | _____ |
| _____ | 10. | A copy of the payment plan agreement and down payment (if required) and the signed Consent Assessment of Civil Penalty (Payment Plan) are included in the report when the operator has agreed to this agreement.          | _____ | _____ | _____ |
| _____ | 11. | Company name, citation and permit numbers are consistent between the Conclusion of Conference report and the Consent assessment of Civil Penalty agreement.   | _____ | _____ | _____ |
| _____ | 12. | The interest rate on the Consent of Civil Penalty Agreement is listed at 7 % and the payment amount and due date for payments are consistent with those in the payment plan chart and the Civil Penalty Remittance forms. | _____ | _____ | _____ |

CONFERENCE OFFICER AUDIT REPORT

		<u>Date of Review</u>
<u>Company Name</u>	<u>Citation #</u>	<u>Date of Conf.</u>
<u>Termination Date</u>	<u>\$: NOPA</u>	<u>\$: Revised Penalty</u>
<u>\$: Collected</u>	<u>\$: Payment Plan</u>	<u>Conference Officer</u>

I. Answer the following questions regarding your Conclusion of Conference Report.

Manager's Concurrence		Yes	No	Rater's Concurrence (Initials)
_____	1. Proper company name and citation number(s) appear on relevant sheets of the report	_____	_____	_____
_____	2. The type of letter (i.e.- full payment or no payment required) is appropriate to the conclusion of conference.	_____	_____	_____
_____	3. NOPA amount is transferred accurately to the conference report.	_____	_____	_____
_____	4. Additions to or reductions in the penalty are accurately computed.	_____	_____	_____
_____	5. Narrative is clearly and accurately written.	_____	_____	_____
_____	6. Narrative is free of spelling and grammatical errors.	_____	_____	_____
_____	7. A report for each violation conferenced is included in the report.	_____	_____	_____
_____	8. A copy of the vacation of the violation(s) is attached if it has been vacated.	_____	_____	_____

Date

SAMPLE AFFIDAVIT  
STATEMENT OF JOHN DOE

I, John Doe, Engineer for ABC Coal Company, Inc. make the following statement to demonstrate extraordinary efforts taken by ABC Coal Company, Inc. to achieve rapid abatement of violation 1 of 2, citation number NOV 86-091-016-002(3), mine #24 in Scott County, Tennessee.

(1) I pulled eight men from active production mine #26 in Fentress County, Tennessee to inactive mine #24 in Scott County, Tennessee, approximately 25 miles away.

(2) I pulled one dozer, one front end loader, and two trucks from active production mine #27, Whitley County, Kentucky, approximately 75 miles away.

(3) All equipment was hauled from mine #27 by contract carrier, XYZ Haulers, of Williamsburg, Kentucky at a cost of \$2,500.00. (Copy of invoice and/or payment is attached).

(4) Contracted with JOB Consulting, Inc., of Oak Ridge, Tennessee at a cost of \$1,800.00 (copy of invoice attached) to design and assist in the installation of the treatment system required to abate the violation.

(5) I personally supervised and directed the work to achieve abatement of this violation for approximately 12 hours.

(6) Abatement was achieved at 10:00 a.m. on June 30, 1986.

(7) Jack Labor called Inspector Jake Q. Smith at 10:15 a.m., June 30, 1986, advising him that abatement had been achieved and effluent limits were in compliance.

(8) Inspector Smith returned to the site of violation July 1, 1986 at 11:00 a.m. and issued termination for the violation.

State of \_\_\_\_\_

County of \_\_\_\_\_

I hereby affirm, under oath, that the foregoing is correct and true to the best of my knowledge.

\_\_\_\_\_  
John Doe, Engineer

Sworn to before me and subscribed in my presence this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public  
(Include country, state and  
expiration date of commission)





# United States Department of the Interior



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

To: Evelyn Freeman  
Conference Officer Task Force

Thru: Pete Thompson  
Knoxville Field Office

From: Billy R. Kneisley, Conference Officer  
Knoxville Field Office

Subject: Status Report

COMPANY: \_\_\_\_\_ CITATION: \_\_\_\_\_

<u>VIOLATION NO.</u>	<u>DATE FOR ABATEMENT</u>	<u>TERMINATION</u>
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----

Reason(s) for delay:

If you have any questions, please contact me at (615) 673-5126.

cc: C. Carter  
Branch of Assessments





EXHIBIT 14 - Conference Sign-In Sheet

\*\*\*\*\*  
CONFERENCE SIGN-IN SHEET

Conference Date: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Citation Number(s)

Permit Number(s)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THOSE IN ATTENDANCE:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_

\*\*\*\*\*



EXHIBIT 12 - Conference Conclusion Letter - Payment Plan

\*\*\*\*\*  
CONCLUSION OF CONFERENCE

Mr. John J. Jones, President  
ABC Coal Co Inc  
P.O. Box 123  
Someplace, Tennessee 37777

Re: Assessment Conference for: ABC Coal Co Inc  
Violation No. 1 of 1 of N88-099-099-099(1)  
Permit: 88-888

Dear Mr. Jones

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

After reviewing all of the information supplied to me at the conference and all other information available to me concerning the above violation, pursuant to 30 CFR Part 723, I am revising the assessment for the above mentioned violation 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 (Payment Plan) and down payment was received, this concludes the above assessment conference. If you have any questions which are not answered by this letter, you may call me at (615) 673-5126.

Sincerely

Assessment Conference Officer

Enclosure

cc: E. Freeman  
Conference Officer Task Force  
C. Carter  
Branch of Assessments

\*\*\*\*\*

This is a continuation of the inspector's report. Look for discrepancies in comments versus assessments.

Page 2 of 2

Permittee Anyole Coal Company  
Permit No. 88-A03

summarized as follows:

	<u>pH</u>	<u>Acidity</u>	<u>Alkalinity</u>
Basin 001 discharge	3.73	99.84	0
Basin 001 upstream	6.89	6.12	12.94
Basin 001 downstream	6.60	7.08	12.94

At this point the inspection concluded.

Service of NOV No. 86-091-000-001 was effective on 12/10/86 at the tippie facility in Morley. Present to accept service was Lloyd Smith, tippie manager.

Mr. Lloyd Smith was informed about the issuance of this NOV. This discussion included the nature of the violation, the abatement measures, the basin involved, and the abatement time.

Performance standards not indicated as in compliance are summarized as follows:

25F: Effluent violation addressed in NOV 86-091-000-001.

Item 28 is not in compliance as evidenced by NOV 86-091-000-001.

This is the inspector's statement and used by the Assessor's to determine the level of assessment within the various categories:

3/23/78

NOV 86-091-000-001

Violation # 1 of 1

SUPERVISOR'S STATEMENT

1. What violations (see to 10.) if this is an obstruction or enforcement violation? What hazard event was this regulation designed to prevent? (Insert the event listed on the reference list and remember that the event is not the cause of the violation.)

WATER pollution

event or obstruction ?

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

The event has happened. Discharge from basin 001 was out of compliance for p H. Basin 001 discharge had a pH of 3.73.

probability of occurrence

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? Damage does extend off the permit area.

The damage to the receiving stream is slight. Lab analysis of impacts to the receiving stream is as follows; upstream pH 6.89, downstream pH 6.60, acidity upstream/downstream was unchanged, and alkalinity upstream was 10.95 dropping to 9.75 on the downstream.

what was the extent

4. How much damage might have occurred if the violation had not been discovered by an On Inspector? Describe this potential damage. Would the damage extend off the permit area? Damage associated with this type of violation (effluent limits) invariably occurs off the permit area. The basins have been in place quite some time, no previous effluent violations have been documented, and the basins only discharge during rainfall events. It is doubtful that off-site damage will get any worse than that documented in this violation.

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

1. Describe how violation of this regulation actually obstructed enforcement by the end or the public.

102. Cause of Fault (only one question applies to each violation; first decide which question to answer).

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

2. If you think this violation was the result of not knowing about OES regulations, negligence or OES regulations, or the result of lack of reasonable care, explain.

Operator usually treats the two basins (001 and 005) on this area that have pH problems prior to rainfall events which would result in basin discharge. However, in this event the operator apparently did not exercise reasonable care as basin 001 was discharging and was out of compliance.

negligence

4. If the actual or potential enforcement area or here to the public should have been advised as a careful operator, describe the situation and what, if anything, the operator did or did not do to bring it to the public's attention.

9. Was the operator in violation of a specific permit condition? Did the operator have no prior warning of violation by the State or by OES concerning this violation? If so, give the date and the type of warning.

prior warnings ?

Chief Dates

103. In order to receive your full credit for compliance with an OES or EC, an operator must immediately remediate to comply as rapidly as possible. The violation must be corrected by the date set for statement. If you think this applies, describe how long the violation was and what corrective measures the operator took.

12/13/78

J. H. 11000

This is a check-sheet used for statistics within enforcement management. This form is not always included in the enforcement package. Some of the information might be useful but explanation of the blocks will have to be explained by enforcement. This is a two page report.

Page 1 of 2 pages

United States Department of the Interior Office of Surface Mining Mine Site Evaluation Inspection Report				For Office Use Only Y <input type="checkbox"/> V <input type="checkbox"/> M <input type="checkbox"/> E <input type="checkbox"/> Ques <input type="checkbox"/> <input type="checkbox"/> Report <input type="checkbox"/> <input type="checkbox"/>			
1. Name of Permittee ARYOLE COAL COMPANY				8. MSHA Number 40-00000-		9. Date of Inspection (Y M D D) 8/6/21/0	
3. Street Address P O Box 000				11. State Permit Number 88 A03			
4. City Jellico		5. State TN		12. Name of Mine MORE Tiptoe			
6. Zip Code 37762		7. Area Code 615		8. Telephone Number 555-7225		13. County Code 013	
14. State Code TN		15. Strata <input checked="" type="checkbox"/>		16. State Area Office 01			
17. OSM Field Office No. 09		18. OSM Area Office No. 1		19. OSM Sample No. <input checked="" type="checkbox"/>		20. Type of Inspection Code PP	
21. Joint Inspection Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		22. Inspector's ID No. 000					
23. Status A <input type="checkbox"/> Type of Permit B <input type="checkbox"/> Type of Mining Code C <input type="checkbox"/> Type of Facility Code D <input type="checkbox"/> Number of Permitted Acres E <input type="checkbox"/> Number of Disturbed Acres				24. Type of Activity (check applicable items) A <input type="checkbox"/> Strip Steps B <input type="checkbox"/> Mountain Top Removal C <input type="checkbox"/> Pitso Funnels D <input type="checkbox"/> Abandoned Valley Floors E <input type="checkbox"/> Anthracite F <input type="checkbox"/> Federal Lands G <input type="checkbox"/> Indian Lands H <input checked="" type="checkbox"/> Other Tiptoe			
25. Performance Standards (Contd)							
Substantiate indicate compliance code. For any standard marked 2 or 3 provide narrative to support this designation.							
Standards That Limit the Effects to the Permit Area				Standards That Assure Reclamation Quality and Timeliness			
A <input type="checkbox"/> Distance Prohibitions B <input type="checkbox"/> Mining Within Permit Boundaries C <input type="checkbox"/> Signs and Markers D <input type="checkbox"/> Sediment Control Measures E <input type="checkbox"/> Design and Certification Requirements—Sediment Control F <input checked="" type="checkbox"/> Erosion Limits G <input type="checkbox"/> Surface Water Monitoring H <input type="checkbox"/> Ground Water Monitoring I <input type="checkbox"/> Grading Procedures J <input type="checkbox"/> Road/Access Road Design and Maintenance K <input type="checkbox"/> Refuse Impoundments L <input type="checkbox"/> Other: Security				M <input type="checkbox"/> Topsoil Handling N <input type="checkbox"/> Backfilling and Grading O <input type="checkbox"/> Following Reclamation Schedule P <input type="checkbox"/> Revegetation Requirements Q <input type="checkbox"/> Deposit of Excess Spoil R <input type="checkbox"/> Handling of Acid or Toxic Materials S <input type="checkbox"/> Highest Elevation T <input type="checkbox"/> Damaged Spoil Deposit U <input type="checkbox"/> Post Mining Land Use V <input type="checkbox"/> Cessation of Operations, Temporary W <input type="checkbox"/> Other			

This is the continuation page.

United States Department of the Interior Office of Surface Mining Mine Site Evaluation Inspection Report			
26. State Permit Number <b>88 403</b>		27. Date of Inspection M M D D <b>8 6 1 2 1 0</b>	
28. Yes <input type="checkbox"/> No <input type="checkbox"/> Do mining and reclamation activities on the site comply with the plans in the permit? <input type="checkbox"/> If no, provide narrative to support this determination.			
29. Indicate number of complete and partial inspections conducted by the State to date for this annual review period:			
29a. <input type="checkbox"/> Number of Complete	29b. <input type="checkbox"/> Number of Partial		
30. Indicate number of complete and partial inspections required by the State during this annual review period:			
30a. <input type="checkbox"/> Number of Complete	30b. <input type="checkbox"/> Number of Partial		
31. Has inspection frequency been met?			
31a. Yes <input type="checkbox"/> No <input type="checkbox"/> Complete		31b. Yes <input type="checkbox"/> No <input type="checkbox"/> Partial	
32. FEDERAL ENFORCEMENT INFORMATION. [Enter violation number. Check appropriate boxes]			
Ten-Day Notice No. <input type="checkbox"/>	Notice of Violation No. <b>82-87-262-037</b>	Cessation Order No. <input type="checkbox"/>	Violation Codes
A <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Authorizations to Operate
B <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Signs and Markers
C <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Reclaiming and Grading
D <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Highwall Elimination
E <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pits and Gulches
F <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Improper Pits
G <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Topsoil Handling
H <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sediment Ponds
I <input type="checkbox"/>	<input checked="" type="checkbox"/> viol. 1.e.F.1	<input type="checkbox"/>	Effluent Limits
J <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water Monitoring
K <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Buffer Zones
L <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roads
M <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dams
N <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Steering
O <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Revegetation
P <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Spill on the Downslope
Q <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mining Without Permit
R <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exceeding Permit Limits
S <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Distance Prohibitions
T <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Toxic Materials
U <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other Violations
33. Name of Authorized Representative (print or type) <b>JEFF</b>		34. Administrative Information	
Signature of Authorized Representative <i>[Signature]</i>	Date <b>12/11/86</b>	a <input type="checkbox"/> Permit Review (Hours)	
Signature of Governing Official <b>I. M. B...</b>	Date <b>12-15-86</b>	b <input type="checkbox"/> Travel Time (Hours)	
		c <input type="checkbox"/> Inspection Time (Hours)	
		d <input type="checkbox"/> Report Writing Time (Hours)	

This is a modification of a citation. It should be carefully reviewed to see if the original violation was amended and whether the assessment should also be amended.

U.S. DEPARTMENT OF THE INTERIOR Office of Surface Mining Reclamation and Enforcement MODIFICATION OF NOTICE OF VIOLATION OR CESSATION ORDER				
1. Name <b>ANYOLE COAL COMPANY</b> <input checked="" type="checkbox"/> Permittee : <input type="checkbox"/> No Permit		Originating Office Address <b>OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828</b>		
2. Mailing Address <b>P.O. Box 000, Jellico, TENNESSEE 37762</b>				
3. Name of Mine <b>More Tipple</b>		Surface <input type="checkbox"/> Underground <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Other (Specify) <b>Tipple 7</b>	
4. Telephone Number <b>(615) 555-2225</b>	5. County <b>Campbell</b>	State <b>TENNESSEE</b>		Telephone Number <b>(615) 632-1718</b>
6. Operator's Name		8. Date of Inspection <b>December 17, 1986</b>		
7. Mailing Address		9. Time of Inspection From <b>11:15</b> To <b>11:30</b>		
10. State Permit Number <b>8-A03</b>	11. NPDES Number <b>TN005555</b>	12. MSHA ID Number <b>40-00000</b>	13. OSM Mine Number	
ACTIONS TAKEN				
Authority: Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201) the following action is taken:				
14. Notice of Violation Number <b>86-091-000-001</b>	Dated <b>12/10/86</b>	15. Cessation Order Number <b>- - -</b>	Dated	
16. VIOLATION <u>1</u> OF <u>1</u> IS MODIFIED: (Describe Action and Justify) <b>Abatement date is extended to 10:00 AM on <u>any</u> Dec. 22, 1986. Permittee/operator requested the extension in order to try additional treatment methods. Site inspection indicated that the basin 001 had been treated with agricultural lime with limited success. The basin pH had been raised a full pH unit from 3.7 to approximately 4.7. In-flow into the basin had been treated and was in compliance. As the permittee/operator is making "good faith" effort to abate, the extension is granted.</b>				
17. VIOLATION _____ OF _____ IS MODIFIED: (Describe Action and Justify)				
18. VIOLATION _____ OF _____ IS MODIFIED: (Describe Action and Justify)				
19. Print Name of Authorized Representative <b>JEFF</b>		Identification Number <b>000</b>		
20. Signature of Authorized Representative <i>Jeff</i>		Effective Date <b>12/17/86</b>		

changes the abatement date

Note the good faith comment and also the consistent effort

12/23/86

HAND SERVED 12/18/86 J.

This is the termination or vacation notice whichever is applicable. Document should be reviewed for statements and dates. Only if a violation has been satisfactorily resolved is settlement possible.

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 <b>ANYOLE COAL COMPANY</b>		8. Permit 11. No Permit		Originating Office Address <b>OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828</b>
2. Mailing Address <b>P.O. Box 000, Jellico, Tennessee 37762</b>				Telephone Number <b>(415) 632-1718</b>
3. Name of Mine <b>MORE TIPPLE</b>		7. Surface <input type="checkbox"/> Other (Specify) <input checked="" type="checkbox"/> 11. Underground <input type="checkbox"/> <b>Tipple</b>		
4. Telephone Number <b>(615) 784-7225</b>	5. County <b>Campbell</b>	State <b>TENNESSEE</b>		6. Date of Inspection <b>December 18, 1986</b>
6. Operator's Name				9. Time of Inspection From <b>11:35</b> to <b>11:55</b>
7. Mailing Address				
10. State Permit Number <b>EB-AC3</b>	11. NPODES Number <b>TN005555</b>	12. MSHA ID Number <b>40-00000</b>	13. OSM Mine Number	
ACTIONS TAKEN				
Authority: Under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201) the following action is taken:				
14. Notice of Violation Number <b>86-091-000-001</b>	Dated <b>12/10/86</b>	15. Cessation Order Number		Dated
16. VIOLATION <u>1</u> OF <u>1</u> IS <input checked="" type="checkbox"/> Terminated <input type="checkbox"/> Vacated for the following reasons: <b>Permittee/operator has performed ABATEMENT MEASURES. BASIN OOI HAS BEEN SUCCESSFULLY TREATED AND IS IN COMPLIANCE WITH EFFLUENT limitations.</b>				
17. VIOLATION _____ OF _____ IS <input type="checkbox"/> Terminated <input type="checkbox"/> Vacated for the following reasons:				
18. VIOLATION _____ OF _____ IS <input type="checkbox"/> Terminated <input type="checkbox"/> Vacated for the following reasons:				
19. Print Name of Authorized Representative <b>J. S. P.</b>				Identification Number <b>000</b>
20. Signature of Authorized Representative <i>J. S. P.</i>				Effective Date <b>Dec. 18, 1986</b>

Termination vacation ?

This is another inspector's report and not always will be included or made a part of the package. The comments can be most helpful in determining the overall effort and cooperation of the operator in resolving the situation.

INSPECTION REPORT

Permittee: Anyole Coal Company  
P. O. Box 000  
Jellico, TN 37762

County Campbell

Operator:

Permit No.: 88-A03

Date of Inspection: December 17 and 18, 1986

Type of Inspection: NOV Follow-up

Inspector: Jeff 9

Action Taken: Modified NOV 86-091-000-001, violation 1 of 1 for effluent limits to extend abatement date from 12/19/86 to 12/22/86. Terminated NOV 86-091-000-001 violation 1 of 1 on 12/18/86

Discussion:

A follow-up inspection was conducted on this tipple site on 12/17/86 and 12/18/86. The permittee was represented on site during these inspections by Mr. Lloyd Smith

On 12/10/86 basin 001 was found to be discharging water with a pH below minimum effluent limitations. This resulted in the issuance of NOV 86-091-000-001. Abatement date was initially set for 10:00 a.m. on 12/19/86. The initial NOV follow-up inspection was conducted on 12/17/86. This inspection revealed that basin 001 had been treated with agricultural lime with limited success. The basin pH had increased from approximately 3.7 to 4.7. In-flow into the basin was being treated and was in compliance. At this point the permittee requested additional time be granted in order to try a different treatment method and achieve compliance with effluent limits. As the permittee was making a "good faith" effort to comply, additional days was granted making the new abatement date 12/22/86. This modification was hand-served on 12/18/86 at which time it was determined that basin 001 had been successfully treated and was in compliance with effluent limitations. As a result, violation 1 of 1 in NOV 86-091-000-001 was terminated. A copy of the termination was hand served to Mr. Lloyd Smith at the completion of the follow-up inspection.

again comments on good faith efforts and consistency of effort. 1st attempt did not resolve so an alternate method was employed

This package contains the forms and depicts the procedures that are employed by the Conference Officer and staff. Once the conference is held, decisions are rendered, conference conclusion is prepared and accepted, the case is concluded. The case file is retired and retained in the permanent file.

CONFERENCE NOTES

Date of Conference: *MARCH 11, 1987*

Company: Anyole Coal Company

Mine Name: More Tipple

Permit #: BR-A03

County: Campbell

St: Tn

Citation # *M86-091-000-001* Violation *1* of *1*

Cause of Problem: Failure to meet effluent limitations for water discharge.

Service Date: 12-10-86 (Hand-served)

Date to Abate: 12-19-86 12-22-86 #Days to Abate: 12 (1)

Termination Date: 12-18-86 #Days to Termination: 8 (2)

2/1 X 100 = *66.67* % Rapid abatement points available: Four (4)

Extraordinary measures employed: *Best Supplies - Bought in EXTRA MEN - CONSTRUCTED NEW TREATMENT SYSTEMS*

Original Assessment:

HISTORY	_____	*10	
PROBABILITY	<i>.15</i>		
EXTENT	<i>.9</i>		
SERIOUSNESS	<i>.24</i>	*21	
OBSTRUCTION	_____	*10	
NEGLIGENCE	<i>.12</i>	*13	
GOOD FAITH	_____		<i>4 GOOD FAITH POINTS AWARDED</i>
TOTAL	<i>.36</i>	*31	<i>32</i>
	<i>1500</i>		<i>1200</i>

Notes:

*AFFIRM AS PROPOSED EXCEPT AWARD GOOD FAITH - OPERATOR FURNISHED SWORN STATEMENT. ADVISED TO MONITOR TREATMENT SYSTEM AND ASSURE COMPLIANCE. OPERATOR FULL PAID AND SIGNED A CONSENT AGREEMENT.*

This form can be used to evaluate the assessment and enforcement packages. The typed data was extracted from these two packages and used to determine if the conference was ready for scheduling and to determine problems if any. It was noted that potential good faith was available.

Once the conference is held notes can be added and then studied so as to arrive at a conclusion.

The decision should be made and rendered to the Operator. Settlement should be achieved if possible.

This form is used to schedule the conference, and is also used as a posting copy to comply with posting requirements. Normally a copy is posted at the Conference Officer's location and also in the office that was instrumental in issuing the citation. The person requesting the conference should be contacted and a mutual agreeable date and time established to hold the conference. The conference should only be scheduled after the assessment and enforcement packages are reviewed and noted discrepancies either clarified or eliminated.



United States Department of the Interior

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

MAR 4 1987

The Conference Officer should assure that the requestor of the conference is apprised of the procedure and documentation required at the conference.

Mr. Lloyd Smith, Manager  
Anyole Coal Company  
P.O. Box 000  
Jellico, Tennessee 37762

Subject: Anyole Coal Company  
NSG-091-000-001(1) Permit: 88-A03

Dear Mr. Smith

You have been scheduled an assessment conference on the above referenced citation for March 11, 1987 at 10:00 a.m. at the following address:

Department of the Interior  
Office of Surface Mining  
530 Gay Street, S.W., Room 408  
Knoxville, Tennessee 37902

Please be prepared to submit any material for consideration before or during the conference which concerns the violation or the penalty. You should be prepared to finalize the case at the conclusion of the conference which may include making payment for the agreed penalty. This conference can 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 (615) 673-5126. Only one rescheduling will be considered.

Sincerely,

*Billy R. Kneisley*  
Billy R. Kneisley  
Assessment Conference Officer

The appointment letter is to be mailed regular mail if contact was established. If unable to contact the Operator the appointment should be sent certified to assure receipt. Additional time should be allowed before the scheduled conference to assure receipt of mail.

As it is essential to document the persons attending the conference a sign-in sheet should be used. The conference report will reflect the names of persons attending and this information is sometimes needed for other future requirements.

CONFERENCE SIGN-IN SHEET

Conference Date: MARCH 11 1987  
 Name of Company: ADYOLE Coal Company  
 Citation Number(s) NSG-91-000-001 (1) Permit Number(s) 88-A03  
 \_\_\_\_\_  
 \_\_\_\_\_

All persons attending the conference should sign-in. If more pages are needed they should be prepared and numbered accordingly

THOSE IN ATTENDANCE:

Name: LLOYD SMITH Lloyd Smith  
 Title: MANAGER  
 Company: ADYOLE Coal Co  
 Address: P.O. Box 000 JELICO TN 37762  
 Telephone No: (615) 555-7225  
 \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone No: \_\_\_\_\_  
 \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone No: \_\_\_\_\_

This is only one of many conclusion of conference letters. The one appropriate to the situation should be used.



United States Department of the Interior

OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
830 Gay St., S.W., Suite 500  
Knoxville, TN. 37902  
MAR 17 1987

CONCLUSION OF CONFERENCE

← The date will be inserted after the case is reviewed and approved by the Program Manager.

Mr. Lloyd Smith, Manager  
Anyole Coal Company  
P.O. Box 000  
Jellico, Tennessee 37762R11

Re: Assessment Conference for: Anyole Coal Company  
Violation No. 1 of 1 of KR6-091-000-001(1) Permit: 88-A03

Dear Mr. Smith

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

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

The Assessment Conference Reports show 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 (615) 673-5126.

Sincerely

  
Billy R. Kneisley  
Assessment Conference Officer

Enclosure

cc: E. Freeman  
Conference Program Manager  
C. Carter  
Branch of Assessments



This page reflects the cause of the citation, the initial proposed assessment and the final assessment as a result of the conference. In addition it shows the dates as reflected in the enforcement package.

ASSESSMENT CONFERENCE REPORT  
(Continued)

Company Name: Anyole Coal Company

Permit No: 88-A03

1. Citation No: W86-091-000-001(1)

Violation 1 of 1

(a) Nature of Violation: Failure to meet effluent limitations for water discharge.

(b) Date For Abatement: 12-22-86 Date Served: 12-10-86  
Date of Termination: 12-18-86

2. Conference Result	Proposed ASSESSMENT	Conference ASSESSMENT
(a) History/Prev. Violation	-----	-----
(b) Seriousness		
(1) Probability of Occurrence	.15	.15
Extent of Damage	.9	.9
(2) Obstruction to Enforcement	-----	-----
(c) Negligence	.12	.12
(d) Good Faith	-----	-4
TOTAL POINTS	.36	.32
TOTAL AMOUNT ASSESSMENT	\$ 1,600.00	\$ 1,200.00

The narrative page is not furnished to the operator. Note that the page numbering is such as to not identify the existence to the operator.

ASSESSMENT CONFERENCE REPORT  
(Continued)

Page 2A of 2

Company Name: Anyole Coal Company

Permit No: 88-A03

Citation No: WSG-091-000-001(1)

Violation 1 of 1

3. Narrative:

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

Four (4) points good faith awarded for rapid abatement combined with extraordinary measures. Citation was hand served on 12-10-86 with abatement date of 12-22-86, after modification. This allowed 12 days to resolve the problem. Citation was terminated on 12-18-86; within 8 days or in 66.67% of the time allowed for resolution. Inspector's statement commented on good faith efforts and the Operator furnished a sworn affidavit (see attached).

Operator agreed to the revised assessment, signed the consent agreement and rendered full payment.

Full explanation or rationale should be made for any changes or modifications of assessment. In addition documents should be attached or identified that constitute the basis for change.

A brief statement of settlement or non-settlement should be made

All modifications or revisions of assessments should be documented and made a part of the case file. Sworn statements can be obtained or copies of actual documents. There needs to be justification in every instance that caused a revision, reduction or affirmation of assessment. Submitted documents need to be reviewed and evaluated as to whether the assessment as proposed can be modified. Sufficient time may be allowed for the Operator to supply documentation but firm deadlines should be established.

Pg 23 of 2

Page 1 of 2

#### STATEMENT OF LLOYD SMITH

I, Lloyd Smith, Manager of Anyole Coal Company, make the following statements to demonstrate extraordinary efforts taken by Anyole Coal Company to achieve rapid resolution of the violation cited under NOV 86-091-000-001(1), More Tipple, located in Campbell County, Tennessee.

(1) There were three men pulled from active production mine #2, Anderson County, Tennessee which is approximately 15 miles away.

(2) I used two of the men to immediately start treating the basin with agricultural lime. The other man was dispatched to LaFollette approximately 8 miles away to secure additional chemicals. For this purpose, I utilized the truck normally used at the active mine site to transport the men and to purchase the chemicals.

(3) After treating and monitoring the basin it was determined that some improvement had been accomplished but the basin was still not within acceptable limits.

(4) An engineering firm was contacted and a representative came to the site. It was recommended a different treatment system be employed and the engineer drew up plans and specifications. The specifications were delivered to a welding shop in Jacksboro and the new system was manufactured. When completed two men were dispatched to secure the new system and return it to the tipple site for installation. The cost of the engineer, construction of the new system, delivery and installation was \$3,121.77. Cost of the chemicals was an additional \$223.84.

(5) When the new system was installed and it was determined the basin was in compliance, a call was made to the Inspector. The Inspector came to the site, made an analysis of the discharge and issued termination of the violation on December 18, 1986.

(6) The resolution of the violation incurred the use of three men for eight (8) days and the exclusive use of the truck for the entire period. This also involved the bulk of my time to supervise and monitor the activities to resolve the violation.

Statements should be sworn, notarized and furnished prior to or at the scheduled conference. If the statement was not prepared in advance it may be rendered at a later date or taken during the conference process. Conference Officers have been delegated the authority to administer oaths and the Operator should be asked to confirm that the statements rendered are true and accurate.

*Pg 2 of 2*

Page 2 of 2

Lloyd Smith, being duly sworn says that the statement made in the foregoing is true to the best of his knowledge.

*Lloyd Smith*  
-----  
Lloyd Smith, Manager

State of Tennessee  
County of Campbell

Sworn to before me and subscribed in my presence this the 10th day of March, 1987.

*Surie Jones*  
-----  
Notary Public

Settlement should be achieved if at all possible. A consent agreement is used to affirm settlement. The settlement agreement should be executed and signed at the scheduled conference unless the representative can not sign and render necessary payment. The consent agreement can be prepared and furnished to the representative to be returned by a given date.



United States Department of the Interior

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

RE: Anyole Coal Company

NOV 86-091-000-001(1)

-----  
Operator

CONSENT ASSESSMENT OF CIVIL PENALTY  
(Full Payment)

THIS AGREEMENT is made and entered into this 11th day of March, 1987, by and between Anyole Coal Company ("the Operator") and the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior ("OSM").

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 Operator Notice of Violation ("NOV") No. 86-091-000-001(1), charging the Operator with one or more violations of said Act and regulations at the Operator's surface coal mining operation in Campbell County, Tennessee, operated under Permit No. 88-A03; and

WHEREAS OSM has proposed a civil penalty assessment in the amount of \$1,600.00 for said violation; and

WHEREAS the parties wish to settle all outstanding issues arising out of the issuance of said NOV 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 \$1,200.00 is hereby assessed for the violation cited in the above referenced NOV. This assessment is now final, and any rights the Operator may otherwise have had to contest the proposed penalty assessment are expressly waived.

Two original consent agreements should be prepared. Once payment is rendered the payment is identified and one copy is given to the Operator or representative as a receipt. The Conference Officer will never sign this form until payment is rendered as this constitutes receipt of settlement.

2. Receipt of check no. 300 in the amount of \$ 1,200.00 is hereby acknowledged in full payment of said final penalty assessment (provided any personal check timely clears the financial institution on which it is written).

Anzels Coal Company  
Operator

By Lloyd Smith  
Signature

LLOYD SMITH  
Name (print or type)

MANAGER  
Title

OFFICE OF SURFACE MINING

By: Billy R. Kneisley  
Signature

Billy R. Kneisley  
Assessment Conference Officer

Payments are immediately transmitted to the appropriate office. Payments are not to be retained overnight or delayed in transmission. If the office has a designated collection officer the payment should be logged and transmitted by this person.

Department of the Interior  
Office of Surface Mining  
Abstract of Remittances

*SAMPLE*

Deposit Ticket No.: \_\_\_\_\_

Date of Deposit: \_\_\_\_\_

Type:     Knoxville Field Office    

Item No.	Transaction Number	Name of Remitter & Check Number	Description	Acct. Number	Amount
		Anyole Coal Co. Check No. 300 Dated 3/11/87	Civil Penalties assessed against Anyole Coal Co. NOV 86-91-000-1  FULL PAYMENT	141099	\$1,200.

Anyole Coal Company (615) 555-7225 P.O. Box 000 Jellico, Tn 37762		No. 300
UPTOWN BANK Jellico, Tennessee 37762		<u>March 11</u> 19 <u>87</u>
Pay <u>One Thousand Two Hundred and 00/100</u> DOLLARS <u>\$1,200<sup>00</sup></u>		
To The Order Of: <u>Office of Surface Mining</u>		Anyole Coal Company <u>Wayne Smith</u>
000001111-1111-3333 <u>86-91-000-1 (1)</u>		

The above listed remittance(s) received by: Patricia Baumgardner Date 3-11-87  
Collection Officer (Field Office)

The above listed remittance(s) received and deposited by: \_\_\_\_\_ Date \_\_\_\_\_  
Collection Officer (Denver)

The audit report is to be attached to each completed conference case. Items should be reviewed and each part examined to assure that accuracy and completeness has been achieved. Only the appropriate pages of the audit report should be attached to the completed cases. The audit report will be completed by the Rater and the Program Manager.

CONFERENCE OFFICER AUDIT REPORT

<u>ANYOLE Coal Company</u>	<u>NSG-91-000-001(1)</u>	<u>3-11-87</u>
Company Name	Citation #	Date of Conf.
<u>12-18-86</u>	<u>1600</u>	<u>1200</u>
Termination Date	#: NOPA	#: Revised Penalty
<u>1200</u>		<u>KNEISLEY</u>
#: Collected	#: Payment Plan	Conference Officer

I. Answer the following questions regarding your Conclusion of Conference Report.

Manager's Concurrence	Yes	No	Rater's Concurrence (Initials)
<u>    </u> 1. Proper company name and citation number(s) appear on relevant sheets of the report	<u>  /  </u>	<u>    </u>	<u>    </u>
<u>    </u> 2. The type of letter (i.e.- full payment or no payment required) is appropriate to the conclusion of conference.	<u>  /  </u>	<u>    </u>	<u>    </u>
<u>    </u> 3. NOPA amount is transferred accurately to the conference report.	<u>  /  </u>	<u>    </u>	<u>    </u>
<u>    </u> 4. Additions to or reductions in the penalty are accurately computed.	<u>  /  </u>	<u>    </u>	<u>    </u>
<u>    </u> 5. Narrative is clearly and accurately written.	<u>  /  </u>	<u>    </u>	<u>    </u>
<u>    </u> 6. Narrative is free of spelling and grammatical errors.	<u>  /  </u>	<u>    </u>	<u>    </u>
<u>    </u> 7. A report for each violation conferenced is included in the report.	<u>  /  </u>	<u>    </u>	<u>    </u>
<u>    </u> 8. A copy of the vacation of the violation(s) is attached if it has been vacated.	<u>  N/A  </u>	<u>    </u>	<u>    </u>
<u>    </u> Date			<u>    </u> Date



This page of the audit report is only applicable when there has been a revision of proposed assessment. As noted there must be justification and documentation sufficient to allow the revision.

Anyole Coal Co                      MSB-91-000-001(1)                      KWISLEY  
 Company Name                      Citation #                      Conference Officer

II. If the penalty was reduced, answer the following questions:

1. Penalty reductions follow guidelines outlined in the Assessment Manual:

Manager's Concurrence	Yes	No	Rater's Concurrence (Initials)
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Rater's Comments:

2. Documentation is presented in the Conclusion of Conference Report to justify penalty reductions:

Manager's Concurrence	Yes	No	Rater's Concurrence (Initials)
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Rater's Comments:

3. The Conference Officer's file contains sufficient information and documentation to support the justification presented in the Conclusion of Conference Report.

Manager's Concurrence	Yes	No	Rater's Concurrence (Initials)
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Rater's Comments: