



**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.



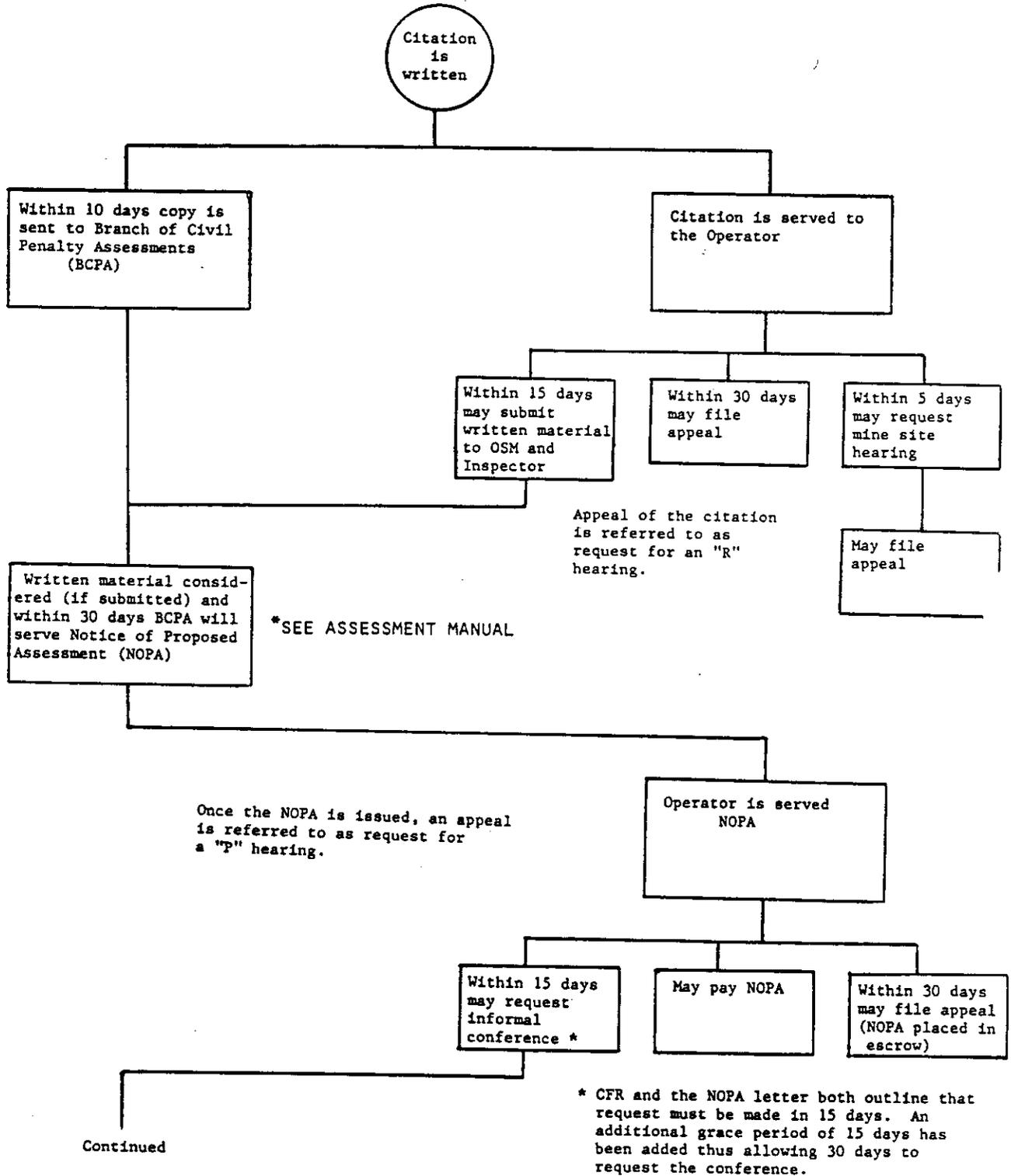
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

CONFERENCE OFFICER
OPERATIONS MANUAL

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TIME GUIDELINES
PENALTY ASSESSMENT &
INFORMAL CONFERENCES



*SEE ASSESSMENT MANUAL

* CFR and the NOPA letter both outline that request must be made in 15 days. An additional grace period of 15 days has been added thus allowing 30 days to request the conference.

Continued

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

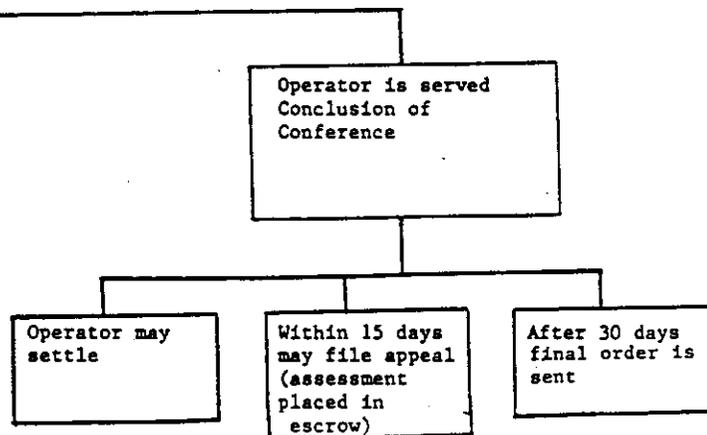
Conference held within 60 days of approval or termination, whichever is later **

** 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.



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>	
Total Proposed Assessment	\$ <u>1,600.00</u>	← 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

NCV # 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.

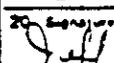
Do the points correspond to those reflected on page 5

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 NOTICE OF VIOLATION 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		10. Time of Inspection From 12:10 To 12:45	
11. State Permit Number: BB-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 REQUIRE CESSATION OF MINING EXPRESSLY OR IN PRACTICAL EFFECT. Therefore, you are are not entitled to an informal public hearing on request, within 30 days after service of this notice (30 CFR 843.15).</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>			
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 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. <u>86-091-000-401</u> Violation Number <u>1</u>
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:

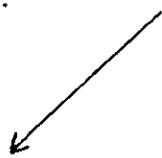
Issued NOV 86-091-000-001
containing one violation for
failure to meet effluent
limitations

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.

1/13/79

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.

Source of Fault (only one question applies to each violation; first decide which question to answer).
4. 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.

1. 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

2. 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 ?

Event Facts

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.

12/13/06

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 ANYOLE COAL COMPANY <input checked="" type="checkbox"/> Permittee No Permit		Originating Office Address OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828	
2 Mailing Address P.O. Box 000, Jellico, Tennessee 37762			
3 Name of Mine MORE Tipple		Surface <input type="checkbox"/> Underground <input type="checkbox"/>	<input checked="" type="checkbox"/> Other (Specify) Tipple
4 Telephone Number (615) 555-7225	5 County Campbell	State TENNESSEE	Telephone Number (615) 632-1718
6 Operator's Name		8 Date of Inspection December 17, 1986	
7 Mailing Address		9 Time of Inspection From 11:15 ^{AM} To 11:30 ^{PM}	
10 State Permit Number 8-A03	11 NPDES Number TN005555	12 MSHA ID Number 40-00000	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 86-091-000-001	Dated 12/10/86	15 Cessation Order Number - - -	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 JEFF	Identification Number 000
20 Signature of Authorized Representative <i>Jeff</i>	Effective Date 12/17/86

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 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
2. Mailing Address P.O. Box 000, Jellico, Tennessee 37762				
3. Name of Mine MORE TIPPLE		<input type="checkbox"/> Surface <input type="checkbox"/> Underground <input checked="" type="checkbox"/> Other (Specify) Tipple		Telephone Number (615) 632-1718
4. Telephone Number (615) 784-7225	5. County Campbell	State TENNESSEE		8. Date of Inspection December 18, 1986
6. Operator's Name		9. Time of Inspection From 11:35^{am} To 11:55^{am}		
7. Mailing Address				
10. State Permit Number 88-AC3	11. NPDES Number TNCC555	12. MSHA ID Number 40-0000	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 86-091-000-001	Dated 12/10/86	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: Permittee/operator has performed abatement measures. Basin 001 has been successfully treated and is in compliance with effluent limitations.				
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 J.P.F.		Identification Number 000		
20. Signature of Authorized Representative <i>[Signature]</i>		Effective Date Dec. 18, 1986		
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 pH. 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 specific 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 pH. 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.

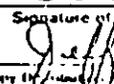
U.S. DEPARTMENT OF THE INTERIOR Office of Surface Mining Reclamation and Enforcement NOTICE OF VIOLATION Permanent Regulatory Procedures			1. Notice of Violation Number 86-091-000-001
2. Name ANYOLE COAL COMPANY		<input checked="" type="checkbox"/> Permittee <input type="checkbox"/> No Permit	
3. Mailing Address P.O. Box 000, Jellico, TENN. 37762			
4. Name of Mine MORE Tipple		<input type="checkbox"/> Surface <input checked="" type="checkbox"/> Other (Specify) Tipple <input type="checkbox"/> Underground	
5. Telephone Number (615) 555-7225	6. County Campbell	State TENNESSEE	Originating Office Address OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828
7. Operator's Name (if other than permittee). SAME AS ABOVE			Telephone Number (615) 632-1718
8. Mailing Address SAME AS ABOVE			9. Date of Inspection DECEMBER 10, 1986
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 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 JEFF	Identification Number 000		
Signature of Authorized Representative 	Effective Date 12/17/86		

Modified time for Abatement
 12-22-86

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 <i>ANYOLE COAL COMPANY</i>		<input checked="" type="checkbox"/> Permittee <input type="checkbox"/> No Permit	
2. Mailing Address <i>P.O. Box 000, Jellico, Tennessee 37762</i>		Originating Office Address <i>OSM NORRIS AREA OFFICE P.O. Box 179 NORRIS, TENNESSEE 37828</i>	
3. Name of Mine <i>MORE TIPPLE</i>		<input type="checkbox"/> Surface <input checked="" type="checkbox"/> Other (Specify) <i>Tipple</i> <input type="checkbox"/> Underground	
4. Telephone Number <i>(615) 784-7225</i>	5. County <i>Campbell</i>	6. State <i>TENNESSEE</i>	Telephone Number <i>(615) 632-1718</i>
6. Operator's Name		8. Date of Inspection <i>December 18, 1986</i>	
7. Mailing Address		9. Time of Inspection From <i>11:35 AM</i> To <i>11:55 AM</i>	
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? Termination 12/18/86
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>	

12/23/86

HAND SERVED 12/15/86 J

Copy Instructions: (1) Write District Office, (2) Mine Permittee, (3) Mine Assessment Office, (4) Post Field Office, (5) District Inspector

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)

PK

9. A copy of the check and/or amount 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.

✓ _____ PK

PK

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.

N/A _____ PK

PK

11. Company name, citation and permit numbers are consistent between the Conclusion of Conference report and the Consent assessment of Civil Penalty agreement.

✓ _____ PK

PK

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.

N/A _____ PK

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) KNOXLEY
 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)

Conference report is prepared to reflect actions of the conference. The report will show persons attending, and the revised or affirmed assessment after a conference is held.

ASSESSMENT CONFERENCE REPORT

Page 1 of 2

Knoxville Field Office

Company Name: Anyole Coal Company

Permit No: M8-A03

Citation No: M86-091-000-001(1)

Type of Conference: in person telephone letter.

Date of Conference: March 11, 1987

Persons in Attendance	Title
Lloyd Smith	Manager
-----	-----
-----	-----

Violation No.	Amount of Assessment As Revised
1 of 1	\$ 1,200.00
-----	-----
-----	-----
-----	-----
-----	-----
-----	-----
-----	-----
-----	-----
-----	-----
-----	\$ 1,200.00

Approved: Billy R. Kinley
(Signature of Conference Officer)

Date: MAR 17 1987

← The date is not inserted until review and acceptance by the Program Manager

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>

