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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

July 11, 1988

CERTIFIED RETURN RECEIPT REQUESTED
P 001 717 763

Mr. Richard H. Allison, Project
Supervisor Environmental
Castle Gate Coal Company
P.O. Box 449
Helper, Utah 84526

Dear Mr. Allison:

Re: Finalized Assessment for State Violation No. N88-18-1-1,
ACT/007/004, Folder #5, Carbon County, Utah

The civil penalty for the above-referenced violation has been finalized. This assessment has been finalized as a result of a review of all pertinent data and facts including those presented in the assessment conference by you or your representative and the Division of Oil, Gas and Mining inspector.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must have escrowed the assessed civil penalty with the Division within a maximum of thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division, mail % Vicki Bailey at the address listed above.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan S. Bachman', written over a horizontal line.

Alan S. Bachman
Assessment Conference Officer

jb
cc: John C. Kathmann, OSM AFO
0644Q-5

Sec 8.

WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING

COMPANY/MINE Castle Gate Coal Company NOV # 88-18-1-1

PERMIT # ACT/007/004 VIOLATION 1 OF 1

Assessment Date 3-22-88 Assessment Officer Alan S. Bachman

Nature of violation: Runoff with coal fines allegedly entered the Price River.

VACATE ASSESSMENT

Date of termination: 3-22-88

	<u>Proposed Assessment</u>	<u>Final Assessment</u>
(1) History/Prev. Vio.	<u>1</u>	<u>0</u>
(2) Seriousness		
(a) Probability of Occurrence	<u>5</u>	<u>0</u>
Extent of Damage	<u>10</u>	<u>0</u>
(b) Hindrance to Enforcement	<u>0</u>	<u>0</u>
(3) Negligence	<u>10</u>	<u>0</u>
(4) Good Faith	<u>-20</u>	<u>0</u>
TOTAL	<u>6</u>	<u>0</u>
	TOTAL ASSESSED FINE	\$ <u>0</u>

3. Narrative:

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

This NOV is hereby vacated. The Division failed to meet their burden of proof that a violation occurred. While probable cause for the citation certainly existed, the evidence of violation was not over the "preponderance of evidence" standard. Of particular note, was that UMC 817-45 was not shown to have been violated. A preponderance of evidence (especially where Castle Gate went forward with evidence showing how they have used what they have thought to be the latest technology), needed to be established by staff that the in-place sediment control measures were not the "best technology currently available".