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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

May 17, 1989

CERTIFIED RETURN RECEIPT REQUESTED  
P 001 717 856

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

Dear Mr. Allison:

Re: Proposed Assessment for State Violation No. N89-31-1-2, #'s 1 and 2,  
ACT/007/004, Folder #5, Carbon County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under UMC/SMC 845.11-845.17.

Enclosed are the proposed civil penalty assessments for the above referenced violations. These violations were issued by Division Inspector, Michael M. DeWeese on March 30, 1989. Rule UMC/SMC 845.2 et seq. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of these Notices of Violation has been considered in determining the facts surrounding the violations and the amount of penalty.

Within fifteen (15) days after receipt of these proposed assessments, you or your agent may file a written request for an assessment conference to review the proposed penalties. The detailed brief should indicate the specific objections to the proposed assessment, stating the grounds for objection and what your assignment of points would be. (Submit a request for conference to Vicki Bailey, at the above address).

**IF A TIMELY REQUEST IS NOT MADE, THE PROPOSED PENALTY(IES) WILL BECOME FINAL, AND THE PENALTY(IES) WILL BE DUE AND PAYABLE WITHIN THIRTY (30) DAYS OF THE PROPOSED ASSESSMENT.** Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Joseph C. Helfrich'.

Joseph C. Helfrich  
Assessment Officer

jb  
Enclosure

an equal opportunity employer

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

COMPANY/MINE Castle Gate Coal Company

NOV # N-89-31-1-2

PERMIT # ACT/007/004

VIOLATION 1 OF 2

ASSESSMENT DATE 5/16/89

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 5/16/89

EFFECTIVE ONE YEAR TO DATE 5/16/88

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

1 point for each past violation, up to one year  
5 points for each past violation in a CO, up to one year  
No pending notices shall be counted

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category the violation falls. Beginning at the mid-point of the category, the AO will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Hindrance

A. Event Violations MAX 45 PTS

1. What is the event which the violated standard was designed to prevent? \_\_\_\_\_

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

PROBABILITY

RANGE

None

0

Unlikely

1-9

Likely

10-19

Occurred

20

ASSIGN PROBABILITY OF OCCURRENCE POINTS \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

\_\_\_\_\_

3. What is the extent of actual or potential damage?

RANGE 0-25\*

\*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? Actual

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

The inspection of sediment pond 12B on March 30, 1989 revealed the following: The water level in the pond was approximately one foot below the emergency spillway containing visible sediment at the surface extending approximately half the longitudinal distance of the pond. The inspector statement further revealed that pond 12B contained no visual reference markers that would either approximate or accurately reflect the sediment volume of the pond, nor was there any current detailed survey data available to accurately or otherwise reflect the sediment or design storm volume in pond 12B; thus 20 points were assigned.

TOTAL SERIOUSNESS POINTS (A OR B) 20

III. NEGLIGENCE MAX 30 PTS

A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO - NO NEGLIGENCE;  
OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO - NEGLIGENCE;  
OR Was this violation the result of reckless, knowing, or intentional conduct? IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS

The noncompliance situation resulted from the operator's failure to prevent the occurrence of a violation due to indifference and lack of diligence. As the inspector statement indicates that the operator was aware of the sediment volume limitations but neglected to monitor the sediment accumulation in the pond to ensure ample volume for the design event.

IV. GOOD FAITH MAX -20 PTS. (either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?  
IF SO - EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20\*  
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10\*  
(Permittee used diligence to abate the violation)
- Normal Compliance 0  
(Operator complied within the abatement period required)  
(Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?  
IF SO - DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20\*  
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- Extended Compliance 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Easy ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS

No plans were required to clean the pond. The operator had the necessary equipment on site to achieve compliance. The operator refused to comply with the abatement measures enumerated in the Notice of Violation until advised of the ramifications. (Phone conversation of 5/8/89, Joe Helfrich, Richard Allison, Jr.)

V. ASSESSMENT SUMMARY FOR      N-89-31-1-2 #1 of 2

I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>20</u>
III. TOTAL NEGLIGENCE POINTS	<u>15</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>
 TOTAL ASSESSED POINTS	 <u>35</u>
 TOTAL ASSESSED FINE	 <u>\$ 500.00</u>

jb  
MN35/100-103

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

COMPANY/MINE Castle Gate Coal Company

NOV # N-89-31-1-2

PERMIT # ACT/007/004

VIOLATION 2 OF 2

ASSESSMENT DATE 5/16/89

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

- A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 5/16/89 EFFECTIVE ONE YEAR TO DATE 5/16/88

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
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1 point for each past violation, up to one year  
5 points for each past violation in a CO, up to one year  
No pending notices shall be counted

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category the violation falls. Beginning at the mid-point of the category, the AO will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Event

A. Event Violations MAX 45 PTS

- What is the event which the violated standard was designed to prevent? Water pollution/offsite sediment loading.
- What is the probability of the occurrence of the event which a violated standard was designed to prevent?

PROBABILITY	RANGE
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 7

PROVIDE AN EXPLANATION OF POINTS

At the time of the 3/30/89 inspection, ponds 12A and B were observed to be 80% full, the thickener pond which would overflow and discharge to ponds 12A and B had been cleaned to approximately 60% of its capacity, .96 million gallons. Total volume of the thickener plant is 1.3 million gallons and no discharge to the thickener pond was occurring; thus 7 points are assigned.

3. What is the extent of actual or potential damage?

RANGE 0-25\*

\*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? \_\_\_\_\_

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A OR B) 7

III. NEGLIGENCE MAX 30 PTS

A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO - NO NEGLIGENCE;  
OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO - NEGLIGENCE;  
OR Was this violation the result of reckless, knowing, or intentional conduct? IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

The Castle Gate Preparation Plant thickener overflow pond is identified in the MRP only by reference to exhibit 3.4-4 which further deliniates a berm around the pond with a bottom width of 12' and top width of 4' designed to prevent any surface water inflow into the pond. The pond is also identified on exhibit 3.4-2 as one of two non-discharging basins. The installation of the culvert through the berm to provide for additional thickener discharge was completed without prior approval by the Division of Oil, Gas and Mining, nor submission of plans attendant to such; thus 20 ponts are assigned.

IV. GOOD FAITH MAX -20 PTS. (either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?  
IF SO - EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20\*  
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10\*  
(Permittee used diligence to abate the violation)
- Normal Compliance 0  
(Operator complied within the abatement period required)  
(Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?  
IF SO - DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20\*  
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- Extended Compliance 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Easy ASSIGN GOOD FAITH POINTS 10

PROVIDE AN EXPLANATION OF POINTS

The permittee exercised diligence to abate the violation.

V. ASSESSMENT SUMMARY FOR N-89-31-1-2 #2 of 2

I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>7</u>
III. TOTAL NEGLIGENCE POINTS	<u>20</u>
IV. TOTAL GOOD FAITH POINTS	<u>-10</u>
TOTAL ASSESSED POINTS	<u>17</u>
TOTAL ASSESSED FINE	<u>\$ 170.00</u>