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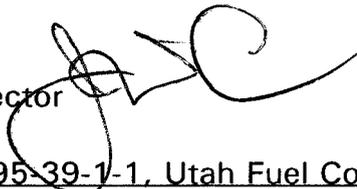
State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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January 16, 1996

TO: File

FROM: James W. Carter, Director 

RE: Cessation Order, CO 95-39-1-1, Utah Fuel Company, Skyline Mine, ACT/007/005, Folder #5, Carbon County, Utah

On August 7, 1995, the Division wrote the above-cited Cessation Order ("CO") to Utah Fuel Company for the unauthorized discharge of water containing continuous miner hydraulic emulsion to Eccles Creek, resulting in the deaths of approximately 2,400 cutthroat trout. The abatement called for under the CO included: 1) Submit mitigation plan and get approval from the Division by October 8, 1995, and 2) Implement mitigation plan immediately after Division approval.

Utah Fuel submitted an emulsion spill control plan on September 14, 1995, and met with representatives of the Utah Division of Wildlife Resources ("DWR") that same day to work out an agreement with DWR for remediation of the wildlife damage. On December 11, 1995, Utah Fuel, Wildlife Resources, and the Utah Water Quality Board agreed to a consent order and mitigation plan which called for Utah Fuel to pay DWR \$7166.67, "...for the fish kill in Eccles and Mud Creeks." That sum included \$1,910 for "Fish Transplant from Electric Lake." Utah Fuel paid the required amount to DWR on December 14, 1995.

In most circumstances, the coal permittee is responsible to implement the on-the-ground elements of an abatement plan, and the Division will not consider abatement complete until the on-the-ground work is completed by the permittee or its contractor. In this instance, the on-the-ground work cannot be performed by the operator or a contractor, because only DWR or its contractors may legally net fish in Electric Lake or introduce fish into Eccles or Mud Creeks.



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The determination whether to restock or not restock Eccles and Mud Creeks is within the purview of DWR and not the Division. Neither the Division nor the operator is able to specify the details of the appropriate abatement, nor can the Division or the operator implement on-the-ground abatement in this case. For these reasons, the Division approves Utah Fuel's "Plan to Prevent Overflow of Emulsion from Mixing Tank", together with the December 11 Stipulation and Consent Order as Utah Fuel's mitigation plan required by the CO. The payment of the stipulated amount to the Division of Wildlife Resources constitutes implementation of that plan. Whether or not fish are restocked in Eccles and Mud Creeks is within the jurisdictional control of DWR, but Utah Fuel has completed all the abatement activities which it is legally able to perform, and the CO should be terminated as completely abated effective December 14, 1995.

vb

cc: L. Braxton
J. Helfrich

UTAHFUEL.MEM.