

0012



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

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

July 3, 1996

CERTIFIED RETURN RECEIPT REQUESTED
P 176 045 900

Ken Payne, Manager
Utah Fuel Company
P.O. Box 719
Helper, Utah 84526

Re: Finalized Assessment for State Violation #C95-39-1-1, Utah Fuel Company, Skyline Mine, ACT/007/005, Folder #5, Carbon County, Utah

Dear Mr. Payne:

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 escrow the assessed civil penalties 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 c/o Vicki Bailey at the address listed above.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Joseph C. Helfrich".

Joseph C. Helfrich
Assessment Conference Officer

blb
Enclosure
cc: James Fulton, OSM
O:I&E\final



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

COMPANY/MINE Utah Fuel Company/ Skyline Mine

NOV # C95-39-1-1

PERMIT# ACT/007/005

VIOLATION 1 OF 1

Assessment Date 07/02/96

Assessment Officer Joseph C. Helfrich

Nature of Violation: Failure to protect and adverse impacts on the environment.

Date of Termination: 02/02/96

		<u>Proposed Assessment</u>	<u>Final Assessment</u>
(1)	History/Previous Violations	<u>1</u>	<u>1</u>
(2)	Seriousness		
	(a) Probability of Occurrence	<u>45</u>	<u>45</u>
	Extent of Damage	<u> </u>	<u> </u>
	(b) Hindrance to Enforcement	<u> </u>	<u> </u>
(3)	Negligence	<u>25</u>	<u>12</u>
(4)	Good Faith	<u>-</u>	<u>-12</u>
	Total Points	<u>71</u>	<u>46</u>
	TOTAL ASSESSED FINE		<u>\$840.00</u>

NARRATIVE:

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

BEFORE THE DIVISION OF OIL GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---oo0oo---

IN THE MATTER OF THE APPEAL OF	:	FINDINGS OF FACT,
FACT OF VIOLATION C95-39-1-1,	:	CONCLUSIONS OF LAW
UTAH FUEL COMPANY, SKYLINE	:	AND ORDER
MINE, CARBON COUNTY, UTAH	:	
	:	CAUSE NO. ACT/007/005
	:	

---oo0oo---

On April 30, 1996, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to Utah Fuel Company for the above-referenced Cessation Order ("CO"). The following individuals attended:

Presiding: James W. Carter, Director
Petitioner: Keith Zobel
Barry Barnum
Division: Joe Helfrich
Steve Demczak
Dave Darby

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing, and on information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.

2. The Assessment Conference, to review the proposed penalties for CO C95-39-1-1, was held immediately following this informal hearing regarding fact of violation. The requirement to pay the assessed penalty is stayed pending this decision upon the informal review of fact of violation.

3. Violation C95-39-1-1 charged that "The permittee has failed to protect, minimize disturbance and adverse impacts on fish, and related environmental values". The operations to be ceased immediately were: "Cease discharging water containing longwall emulsion to Eccles Creek."

4. Due to the failure of a mixing valve on an emulsion mixing tank within the Skyline Mine, the mixing tank overflowed, allowing emulsion to flow to a sump within the mine. Water from the sump, which is automatically pumped to a surface sedimentation pond, became contaminated, and the additional volumes pumped to the pond exceeded its capacity, causing untreated contaminated water to discharge to Eccles Creek.

5. The spill was first noticed at the sedimentation pond at approximately 7:00 am September 6, 1995. By 8:30 am, pumping from the mine was stopped, and by 9:00 am water was being pumped from the pond back into the mine. Approximately 2,400 trout were killed by the spill. Utah Fuel notified DOGM at approximately 12:20 pm, September 6. On September 7, 1995, DOGM issued CO C95-39-1-1.

6. The cessation order also required Utah Fuel to submit a mitigation plan for DOGM and Division of Wildlife Resources approval, to gain DOGM approval by October 8, 1995, and to implement the mitigation plan immediately upon DOGM approval. The Division of Wildlife Resources and the Utah Department of Environmental Quality issued

their own violations, and Utah Fuel paid damages in the amount of \$7,166.67 to DWR pursuant to a consent decree between Utah Fuel, DWR and the Utah DEQ Quality. The mitigation deadline was subsequently extended to July 1, 1996. Utah Fuel completed the required mitigation on December 14, 1995.

7. Utah Fuel contests the assessment of negligence points, arguing that the valve which failed is the industry standard valve, and that Utah Fuel regularly inspected and repaired the valve as necessary. Part of the negligence assessment relates to events occurring after commencement of the discharge and the manner in which Utah Fuel dealt with the emergency.

CONCLUSIONS OF LAW

1. Settlement of violations issued to Utah Fuel by the Division of Wildlife Resources and Department of Environmental Quality does not deprive the Division of Oil, Gas and Mining of jurisdiction of this matter.

2. Although the activities precipitating issuance of this CO had ceased by the time the CO was issued, under the circumstances a cessation order was proper to prevent resumption of the prohibited activities,

3. Only the permittee's behaviors which lead to the violation event should be judged for negligence in contributing to the occurrence of the event. Utah Fuel exhibited normal operator prudence in its activities, and the violation occurred as a result of ordinary negligence. Utah Fuel's abatement and mitigation were rapid compliance of a difficult abatement situation.

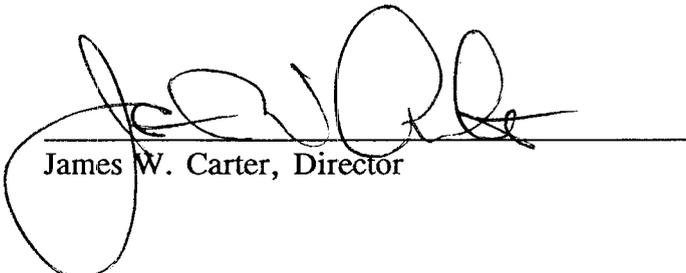
ORDER

NOW THEREFORE, it is ordered that:

1. Cessation Order C95-39-1-1 is upheld.
2. The negligence points assessed are reduced from 25 to 12, and the good faith points are increased from zero to 12, with the total points assessed thereby reduced from 71 to 46, and the assessed fine therefore reduced to \$840.00.
3. The finalized assessment, resulting from the assessment conference is due and payable to the Division 30 days from the date of this Order.
4. The Petitioner may appeal the determinations of fact of violation and/or the finalized assessments to the Board of Oil, Gas and Mining by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements, including placing the assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 2nd day of July, 1996.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING



James W. Carter, Director

BB DQGM ACT/007/005 C95-39-1-1 FLD 5 7/5/96

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
 Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. (Extra charge) 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
 KEN PAYNE
 UTAH FUEL CO
 PO BOX 719
 HELPER UT 84526

4. Article Number
 P 176 045 900

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

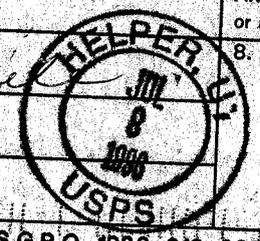
5. Signature - Address
 X *Lawrence J. Mc...*

6. Signature - Agent
 X

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT



P-176 045 900

RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

sent to KEN PAYNE	
Street and UTAH FUEL COM	
City and PO BOX 719	
P.O., State and ZIP Code HELPER UT 84526	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	<i>2.98</i>
Postmark or Date	



PS Form 3800, June 1985

BB DQGM ACT/007/005 FLD 5 7/5/96 C95-39-1-1