0022

OK

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

Michael O. Leavitt
Governor

Kathleen Clarke
Executive Director

Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

September 25, 2001

CERTIFIED RETURN RECEIPT
7099 3400 0016 8895 9833

Dan Meadors, General Manager
Canyon Fuel Company, LLC.
HC 35 Box 380
Helper, Utah 84526

Re: Proposed Assessment for State Violation No. N01-39-1-1, Canyon Fuel Company, LLC., Skyline Name, C/007/005, Compliance File

Dear Mr. Meadors:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued by Division Inspector, Stephen J. Demczak, on September 6, 2001. Rule R645-401-600 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 this Notice of Violation has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of violation will stand, 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 Vickie Southwick.

Sincerely,

Pamela Grubaugh-Littig
Assessment Officer

Enclosure
cc: OSM Compliance Report
Vickie Southwick, DOGM
O:\007005.SKY\COMPLIANCE\ASSESMNT\N01-39-1-1LTR.DOC

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING

COMPANY / MINE Canyon Fuel Company, LLC /Skyline Mine PERMIT C/007/005
NOV / CO # N01-39-1-1 VIOLATION 1 of 1

ASSESSMENT DATE September 25, 2001

ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY (Max. 25 pts.)

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

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS

1 point for each past violation, up to one (1) year
5 points for each past violation in a CO, up to one (1) 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 apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.

2. Beginning at the mid-point of the category, the Assessment Officer 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 VIOLATION (Max 45 pts.)

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

******Additional contribution of suspended solids outside the permit area.***

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 __20__

PROVIDE AN EXPLANATION OF POINTS:

******The violation was written because the underground mine pumping system discharged coal fines (suspended solids) into Eccles Creek outside the permit area, additional contribution of suspended solids outside the permit area. The permittee took water samples at 9:30 am and at 2:30 pm on August 28, 2001, the date of the event. The sample taken at 9:30 am exceeded the daily total suspended solids limits of 70 mg/L, i.e. the analysis for total suspended solids was 171 mg/L (or over twice the daily limit.)***

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 __8__

PROVIDE AN EXPLANATION OF POINTS:

******There is potential damage to the macro invertebrates. As part of the abatement for this violation, the permittee will perform a macro invertebrate study of Eccles Creek semi-annually for three consecutive years starting in 2002.***

B. HINDRANCE VIOLATION (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)__28__

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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE 7

ASSIGN NEGLIGENCE POINTS 12

PROVIDE AN EXPLANATION OF POINTS:

******The permittee was discharging water into Eccles Creek with newly installed de-watering pumps and pipelines without monitoring devices attached. These monitoring devices would have reduced or eliminated the chance of this event occurring, and would have reduced or eliminated the chances of suspended solids from entering Eccles Creek. There were no safeguards to the de-watering system, which would have prevented this event from happening.***

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 condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 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 of 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 -3

PROVIDE AN EXPLANATION OF POINTS:

******The permittee notified the Division within 24 hours of this event, although sooner would have been better for sampling and monitoring the situation from the Division's perspective. When the permittee learned that coal fines were being pumped from the mine into Eccles Creek, they immediately stopped this activity and sought to remediate the situation.***

******The permittee must still submit a plan to be incorporated into the MRP, which will prevent additional contribution of suspended solids outside the permit area and perform a macro invertebrate study on Eccles Creek semi-annually for three consecutive years, starting in the year 2002 which will provide data that can be compared to prior data. Therefore, more good faith points are not able to be determined at this time. The abatement should be comprehensive, adequate, and timely.***

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # **N01-39-1-1**

I.	TOTAL HISTORY POINTS	0
II.	TOTAL SERIOUSNESS POINTS	28
III.	TOTAL NEGLIGENCE POINTS	12
IV.	TOTAL GOOD FAITH POINTS	-3
	TOTAL ASSESSED POINTS	37
	TOTAL ASSESSED FINE	**$ 540**

O:\007005.SKY\COMPLIANCE\ASSESMNT\N01-39-1-1.DOC