

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

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IN THE MATTER OF THE INFORMAL ASSESSMENT CONFERENCE for NOTICE OF VIOLATION AND PROPOSED ASSESSMENT; VIOLATION No. N10028, CANYON FUEL COMPANY, LLC, SKYLINE MINE, C/007/005, EMERY COUNTY, UTAH	: : : : :	FINDINGS of FACT, CONCLUSIONS OF LAW AND ORDER CAUSE NO. C/007/005
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On September 30, 2008, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by R645-401-700 Utah Administrative Code (2008) in response to the written request by Canyon Fuel Company (Canyon Fuel) to review the fact of violation and amount of assessment for Notice of Violation 10028 (NOV) issued to it on August 13, 2008 for operations at the Skyline Mine, C/007/005, Carbon County, Utah.

ISSUES

The Division in its Notice of Violation found that rules R645-742.110, 742.221.34, 742.221.35, and 752,752.220 had been violated. These rules require: that appropriate sediment control measures be designed, constructed, and maintained using the best technology currently available to prevent sediment contributions to stream flow outside of the permit area; that sedimentation ponds provide non-clogging dewatering devices adequate for the 10-year, 24-hour precipitation event and minimize short-circuiting; and that sedimentation control measures be located, maintained, and reclaimed according to the rules and so as to prevent additional contribution of suspended solids to stream flow or runoff outside of the permit area. The Division assessed a fine of \$484.00.

Canyon Fuel, in its written request for an Informal Assessment Conference requested that the Notice of Violation be vacated. They made the following objections to the NOV: (1) the sediment pond was properly designed to the proper design capacity and was being cleaned out in a manner consistent with best practices in order to maintain the required capacity of the pond; (2) the operator was not aware of the weak condition of the prior repair joint and immediately took all appropriate actions to minimize the first discharge; (3) the subsequent storm resulting in the second discharge was beyond the control of the operator and the resulting discharge was not due to any failure in design, operation, or maintenance of the sediment structure by the operator; and (4) the third discharge was a necessary testing of the repair and there was no other way to see if the repair would be effective.

In sum the operator argues that each of the discharges were unavoidable and not due to a failure of the operator to design, operate, or maintain the sediment pond or to follow the best practices or therefore not a violation of any of the rules.

PARTIES

John Baza, Director Division of Oil, Gas and Mining served as the hearing officer. The hearing was conducted as an informal adjudicative proceeding. Karl R. Housekeeper, Division Inspector, presented the facts and arguments in support of the Notice of Violation, Joe C. Helfrich, Assessment Officer, presented the arguments concerning the determination of the assessment amount. Dana Dean, Division Associate Director was in attendance and participated for the Division. Gregg Galecki and Wess Sorensen, permittee representatives, presented the position and arguments on behalf of Canyon Fuel.

No recording or transcript of the conference was made.

FINDINGS OF FACT

Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division the following Findings and Conclusions were made.

1. The Request for an informal assessment conference was delivered to the Division on August 27, 2008.
2. Notice of the Informal Assessment Conference was provided as required.
3. On August 7, 2008 the main sediment pond was being cleaned when a hole was discovered in the discharge pipe. The hole had been previously wrapped in brattice cloth prior to the transfer of the permit to Canyon Fuel.
4. The cleaning efforts disturbed the brattice cloth allowing coal sediment laden material to short circuit the discharge structure and to be discharged through the hole into Eccles Creek. Approximately 375 gallons of material was discharged. This event was immediately reported to the Division by the Canyon Fuel. The inspector was not able to observe the conditions on the day of the spill due to impassable road conditions.
4. About one hour after the discharge on August 7, 2008 a high intensity rainstorm occurred resulting in approximately 0.5 inches of rain falling in about 15 minutes. The resulting high flow caused a second discharge of an unknown quantity of coal sediment to occur.
5. On August 13, 2008 while the repairs to the damaged discharge pipe were being tested and the creek inspected by the Division inspector, a third discharge occurred. This discharge was the result of a failure of the patch placed over the hole and

sealed with a silicon gel to completely seal, resulting in a short-circuit of the system and a discharge of an unknown quantity of coal sediment. The Division inspector was present at the mine during this event.

6. The three discharges resulted in visible quantities of coal fines and sediment being deposited into the stream outside of the permit area.
7. The operator has completed all repairs and there is no additional leaking of the sediment control pond.

CONCLUSIONS OF LAW

1. The sediment pond was properly designed and constructed using the best technology currently available to prevent sediment contributions to stream flow outside of the permit area.
2. The sediment control pond was being maintained using the best technology currently available to maintain the sediment pond design capacity and prevent sediment contributions to stream flow outside of the permit area.
3. Although the repairs of the prior hole may have been inadequate or the discharge pipe may not have been properly maintained, there is no evidence that Canyon Fuel had knowledge or reason to suspect that the repair was in bad condition.
4. There is no evidence that the repair patch was damaged by the improper operations or procedures during the cleaning-out of the pond.
5. The second discharge occurred immediately after the first failure and the operator used best practices and did all that was reasonable to prevent a discharge.
4. The design and efforts of the operator to repair the hole in the discharge pipe after the incidents and the efforts designed to test the repair were not negligent or without due care and the resulting discharge was not due to a lack of proper design, operation, or maintenance of the sediment pond and structures.
5. The operator took all reasonable efforts to immediately notify the division of the discharges, to repair the sedimentation pond discharge pipe, and to clean up the damage.
6. Absent evidence of an improper design, construction, or maintenance of the original repair, and absent evidence of any knowledge by Canyon Fuels of such failures, if any, the discharges were not the result of improper actions by Canyon Fuel.
7. The evidence supports a finding that Canyon Fuel otherwise observed the best practices for design, operation, and maintenance of the sedimentation pond.

8. Accordingly, despite the damage to the stream outside of the permit area from the discharges, the issuance of a notice of violation is unwarranted under these circumstances.

ORDER

NOW THEREFORE, it is ordered that the Notice of Violation is vacated.

SO DETERMINED AND ORDERED this 12th day of November, 2008



John Baza, Director
Division of Oil, Gas and Mining