

**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.
21182, CANYON FUEL CO.
SKYLINE MINE, C/007/0005,
CARBON COUNTY, UTAH**

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

CAUSE NO. C/007/0005

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BACKGROUND

On August 9, 2016, the Division of Oil, Gas and Mining (the Division) held an Informal Assessment Conference as provided for in Utah Administrative Code Rules 645-400-350 and 645-401-700. The hearing was held in response to a written request by Canyon Fuel Company (Canyon Fuel) to review the fact of violation and amount of assessment for Notice of Violation 21182 (the NOV). The Division issued the NOV on May 27, 2016 for violations at the Skyline Mine, C/007/0005, in Carbon County, Utah. On June 28, 2016, the Division assessed a proposed penalty for the NOV amounting to \$4,070.

ISSUES

The Division issued the NOV because of Skyline Mine's "failure to prevent additional contributions of suspended solids to streamflow outside the permit area; and otherwise prevent water pollution." Specifically, the Division alleged that Rules R645-301-731.121¹, R645-301-730, R645-301-750, R645-301-751, R645-301-752.220, R645-301-752.230, R645-301-752.240, and R645-301-752.250 had been violated. Of particular relevance to this Order, Rule R645-301-

¹ The original NOV indicated that Rule R645-301-431.121 had been violated. However, the Division modified the NOV on June 13 to fix this typing error and clarify that the Rule alleged to have been violated was R645-301-731.121.

731.121 requires operators to protect surface-water quality “by handling . . . ground-water discharges and runoff in a manner that . . . prevent[s] water pollution.” In addition, Rule R645-301-751 requires that “[d]ischarges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations and with effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.” Because the Assessment Conference Officer does not find that Skyline Mine violated the other Rules cited by the Division, those Rules are not discussed here.

In its written request for an Informal Assessment Conference, Canyon Fuel requested that the NOV be vacated. Canyon Fuel argued that Skyline Mine minimized disturbance to the hydrologic balance and used the best technology available to prevent additional contributions of suspended solids to the streamflow. It also argued that Skyline Mine complied with Utah and federal water quality laws “by providing both a 24-hour oral and 5-day written Notice of Noncompliance report to the Utah Division of Water Quality (DWQ), per the requirements of Skyline’s Utah Pollution Discharge Elimination System (UPDES) permit[.]” In the alternative, if the Division did not agree to vacate the NOV, Canyon Fuel requested an Informal Assessment Conference. The Division did not vacate the NOV, and held an Assessment Conference on August 9, 2016.

PARTIES

John Baza, Division Director, served as the Assessment Conference Officer during the Informal Assessment Conference. Dana Dean, Daron Haddock, Karl Housekeeper, and Amanda Daniels presented the facts and arguments on behalf of the Division in support of the NOV. Joe Helfrich, assessment officer, presented the arguments concerning the determination of the penalties assessed for the NOV. Chris Hansen, Cory Heaps, Craig Brown, and Gregg Galecki

presented the position and arguments for Canyon Fuel. The Division did not make a recording or transcript of the conference.

FINDINGS OF FACT

Based on the information provided at the conference and found in the Division's files, the Conference Officer makes the following findings of fact:

1. On May 18, 2016, Skyline was in the process of de-watering the Mine to remove groundwater that had accumulated in a portion of the Mine.
2. As part of this process, Skyline had back-flushed the discharge line before discharging the groundwater into Eccles Creek.
3. Skyline Mine gradually increased the flow rate through the discharge pipe over the course of a few hours.
4. As Skyline increased the flow rate, the Mine discharged water containing iron into Eccles Creek.
5. The Mine had personnel located at its Utah Pollutant Discharge Elimination System (UPDES) outfall that entered Eccles Creek. Around 2:00 p.m., these personnel noticed discoloration in the creek from the iron discharge, and Skyline took action to turn off its pipe.
6. Canyon Fuel notified the Division, as well as the Utah Division of Water Quality (DWQ), of the discharge by phone on May 18. The company filed a Notice of Noncompliance Report with DWQ on May 23.
7. The Notice of Noncompliance indicated that mine water containing iron had been discharged into Eccles Creek, and that the discharge lasted for 10 to 12 minutes, flowing at about 1,550 gallons per minute.
8. Water quality samples about half a mile from the Mine's UPDES outfall showed a total iron concentration of 3.11 mg/L.

9. Under Skyline Mine's UPDES permit, the daily maximum for iron discharges is 1.0 mg/L.

10. The Division also received a report from a concerned citizen who observed the discoloration in Eccles Creek. This individual provided the Division with a photograph showing the discoloration.

11. In response to the citizen's report and Skyline's notification, the Division visited Skyline Mine on May 19 to discuss the discharge event.

12. The Division issued the NOV on May 27, 2016 for Skyline Mine's "[f]ailure to prevent additional contributions of suspended solids to streamflow outside the permit area; and otherwise prevent water pollution."

13. The NOV required Canyon Fuel to submit a water sample analysis to the Division and "consult with the Division and [the Division of Wildlife Resources (DWR)] to determine what mitigation is needed."

14. After the initial sampling on May 18, the total iron concentration gradually decreased from the initial 3.11 mg/L to 0.78 mg/L later on May 18, and to 0.59 mg/L on May 19.

15. The Division terminated the NOV on June 13, 2016 because it "received [the] water sample analysis from the Operator and the Division Staff and DWR Staff . . . consulted and determined that no further mitigation . . . [was] needed."

16. The Division received Canyon Fuels' request to vacate the NOV or, in the alternative, for an Informal Assessment Conference, on June 13, 2016.

17. The Division provided notice of the Informal Assessment Conference as required by Rule R645-401-722.

18. On June 28, 2016, the Division's penalty assessment officer assessed 57 points for the NOV, which equated to a fine of \$4,070.

CONCLUSIONS OF LAW

19. Based on the findings of fact described above, the Assessment Conference Officer finds that Skyline Mine violated Rules R645-301-731.121 and R645-301-751. The fact of the violation will therefore be upheld.

20. The Conference Officer does not agree that Skyline Mine violated the remaining Rules cited by the Division.²

I. Skyline Mine's discharge violated Rules R645-301-731.121 and R645-301-751.

21. The Conference Officer finds that the NOV can be upheld under Rules R645-301-731.121 and R645-301-751 because the elevated iron concentration caused by the discharge exceeded the total iron concentration limits in Skyline's UPDES permit.

22. Rule R645-301-731.121 requires that "[s]urface-water quality will be protected by handling . . . ground-water discharges . . . in a manner that . . . prevent[s] water pollution."

23. If a permittee does not handle groundwater in a way that prevents water pollution, the permittee violates Rule R645-301-731.121.

24. Here, the discharge of mine water containing iron led to a total iron concentration of 3.11 mg/L, which exceeded Skyline's allowed concentrations and therefore constituted water pollution. Skyline Mine's method of handling groundwater caused this discharge. Because the Mine did not handle groundwater in a manner that prevented water pollution, it violated Rule 645-301-731.121.

² Two of the Rules cited—R645-301-730 and R645-301-750—contain numerous provisions. Relying on the entirety of these rules to support a violation fails to indicate exactly what section has been violated, and the Conference Officer will not uphold a violation based on the entire rule. The remaining Rules—R645-301-752.220, -752.230, -752.240, and -752.250—relate to the design, construction, use, maintenance, and reclamation of roads to prevent negative impacts to hydrology. Because the activity at issue here has nothing to do with roads, Skyline did not violate any of the Rules found in R645-301-752.200.

25. In the NOV, the Division also alleged that Skyline Mine violated Rule R645-301-751, which requires that “[d]ischarges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations[.]”

26. Utah water quality laws and regulations make it unlawful to “make any discharge . . . not authorized under an existing valid discharge permit[.]” Utah Code § 19-5-107(3).

27. Skyline Mine’s UPDES permit allows daily discharges that result in a total iron concentration of 1.0 mg/L. The initial samples after the discharge showed an iron concentration of 3.11 mg/L.

28. The iron discharge exceeded Skyline Mine’s UPDES daily permit limit for total iron concentrations, and did not comply with Utah water quality laws and regulations.

29. The Conference Officer recognizes that DWQ may authorize temporary exceedances and did not find that Skyline violated DWQ’s rules. However, the Coal Program Rules are entirely separate from DWQ’s rules. Although the former reference Utah water quality laws and regulations, the mere fact that DWQ does not consider one discharge that temporarily exceeded UPDES limits a violation does not mean that the exceedance is not a violation of the Coal Program Rules. The Coal Program Rules do not allow discharges that exceed UPDES limits for total iron concentrations. Because Skyline’s discharge exceeded those limits, the Mine violated Rule R645-301-751.

30. Although similar discharge events have not occurred at Skyline Mine in the past, the fact that this discharge occurred indicates that the Mine may need to consider alternative methods of de-watering in the future.

II. The Conference Officer will vacate the penalty.

31. Under Utah Administrative Code Rule R645-401-723.200, after considering all relevant information on the violation, the Conference Officer may “[a]ffirm, raise, lower, or vacate the penalty.”

32. In this case, Skyline Mine turned its pipe off as soon possible after its personnel located at the UPDES outfall noticed the iron discharge. Doing so reduced the amount of iron that entered Eccles Creek and helped Skyline abate the violation quickly.

33. After discovering that a discharge had occurred, Canyon Fuel notified the appropriate agencies by contacting both the Division and DWQ to notify them of the discharge. The Conference Officer finds that this action is to be commended, and that imposing a penalty would discourage such actions and be inappropriate.

34. Skyline Mine did not intentionally discharge iron into Eccles Creek. Rather, the Mine had been using a process of flushing pipes through the Mine before discharging into the creek, and had been monitoring the water quality while gradually increasing the flow. Although this does not change the fact that a violation occurred, the Conference Officer finds that it counsels in favor of vacating the penalty.

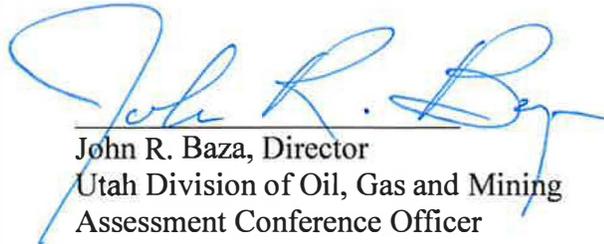
35. The iron discharge did not cause material damage to Eccles Creek or the surrounding environment.

36. Based on the foregoing, the Assessment Conference Officer will reduce the points assessed to zero (0) and vacate the penalty, as authorized by Utah Administrative Code Rule R645-401-723.200.

ORDER

Based on the Findings of Fact and Conclusions of Law discussed above, the fact of the violation is UPHeld under Rules R645-301-731.121 and R645-301-751. However, the \$4,070 penalty is VACATED. An updated Final Assessment Worksheet is attached to this Order.

ORDERED this 9th day of September, 2016.



John R. Baza, Director
Utah Division of Oil, Gas and Mining
Assessment Conference Officer

NOTICE OF RIGHT TO APPEAL

Canyon Fuel, as the operator of Skyline Mine, has the right to appeal the Conference Officer's Order to the Utah Board of Oil, Gas and Mining (the Board) under Utah Code § 40-10-20 and Utah Administrative Code Rule R645-410-810. To exercise this right to appeal, Canyon Fuel must, "within 30 days of receipt of the decision made by the division in the informal conference, request a hearing before the board" Utah Code § 40-10-20(2)(d). *See also* Utah Admin. Code R. 645-401-810. If Canyon Fuel appeals this Order, the hearing before the Board will be formal, and review of the fact of violation "will be conducted by the Board under the provisions of the procedural rules of the Board (R641 Rules)." *Id.* R. 645-401-830.

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

COMPANY: Canyon Fuel Company
PERMIT: C/007/0005
VIOLATION: NOV 21182

ASSESSMENT CONFERENCE OFFICER: John Baza

| | Proposed Assessment | Final Assessment |
|---------------------------------|------------------------|---------------------|
| (1) History/Previous Violations | <u>0</u> | <u>0</u> |
| (2) Seriousness | <u>32</u> | <u>0</u> |
| (3) Negligence | <u>25</u> | <u>0</u> |
| (4) Good Faith | <u>0</u> | <u>0</u> |
| Total Points | <u>57</u> | <u>0</u> |

TOTAL ASSESSED FINE \$ 0

Explanation:

The Assessment Conference Officer recognizes that Skyline Mine personnel turned off their pipes as soon as they discovered the discoloration caused by the iron discharge into Eccles Creek. In addition, the Mine did not intentionally or willfully commit the violation. Further, the act of turning off the pipes quickly reduced the total iron concentration to below daily UPDES limits within a few hours. Although a discharge occurred in violation of the Rules, it did not cause material damage to Eccles Creek or the surrounding environment. For these reasons, the Assessment Conference Officer has reduced the total points assessed to zero (0) and vacated the \$4,070 penalty in its entirety.