

Hill

0044

STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Deputy Secretary
Dianne R. Nelson, Ph.D.

355 W. North Temple • 3rd Floor Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

September 15, 1986

CERTIFIED RETURN RECEIPT REQUESTED
P 001 720 928

Mr. Douglas C. Pearce
Kaiser Coal Corporation
PO Box D
Sunnyside, Utah 84539

Dear Mr. Pearce:

Re: Proposed Assessment for State Violation No. N86-4-9-1,
ACT/007/007, Folder No. 8, Carbon County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under UMC/SMC 845.11-845.20.

Enclosed is the proposed civil penalty assessment for the above-referenced violation. This violation was issued by Division Inspector Dave Lof on August 19, 1986. Rules UMC/SMC 845.2 et seq have been utilized to formulate the proposed penalty. By these rules, any written information 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.

Within fifteen (15) days after receipt of this proposed assessment, you or your agent may file a written request for an assessment conference to review the proposed penalty. (Address a request for a conference to Ms. Janice Brown at the above address.)

IF A TIMELY REQUEST IS NOT MADE, 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 and mail c/o Janice Brown.

Sincerely,

Mike Earl

Mike Earl
Assessment Officer

jmc
Enclosure
cc: D. J. Griffin
7314Q

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

COMPANY/MINE Kaiser/Sunnyside NOV # N86-4-9-1

PERMIT # ACT/007/007 VIOLATION 1 OF 1

I. HISTORY MAX 25 PTS

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

ASSESSMENT DATE 9/9/86 EFFECTIVE ONE YEAR DATE 9/10/85

PREVIOUS VIOLATIONS	EFF. DATE	PTS	PREVIOUS VIOLATIONS	EFF. DATE	PTS
<u>N84-4-17-3</u>	<u>1/11/86</u>	<u>3</u>	<u>N85-4-24-3</u>	<u>6/22/86</u>	<u>3</u>
<u>C85-4-6-1</u>	<u>6/22/86</u>	<u>5</u>	<u>N85-4-1-4</u>	<u>3/13/86</u>	<u>4</u>
<u>C85-4-8-3</u>	<u>6/22/86</u>	<u>15</u>	<u>C85-4-2-1</u>	<u>VACATED</u>	<u>0</u>
<u>N85-4-17-3</u>	<u>6/22/86</u>	<u>3</u>	<u>N85-4-10-1</u>	<u>3/13/86</u>	<u>1</u>
<u>N85-4-19-1</u>	<u>6/22/86</u>	<u>1</u>	<u>N85-4-11-1</u>	<u>3/13/86</u>	<u>1</u>
<u>N85-4-20-2</u>	<u>6/22/86</u>	<u>2</u>	<u>N85-4-4-2</u>	<u>3/13/86</u>	<u>2</u>
<u>N85-4-21-3</u>	<u>6/22/86</u>	<u>3</u>	<u>N86-4-5-1</u>	<u>6/27/86</u>	<u>1</u>

1 point for each past violation, up to one year
 5 points for each past violation in a CO, up to one year
 No pending notices shall be counted

TOTAL HISTORY POINTS 25

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category the violation falls. Beginning at the mid-point of the category, the AO 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 Violations MAX 45 PTS

1. What is the event which the violated standard was designed to prevent? Water Pollution
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

PROBABILITY	RANGE
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-14
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 14

PROVIDE AN EXPLANATION OF POINTS

Assessed as likely based on inspector statement that a berm had been breached where the stream channel passes under the coarse refuse haul road. Inspector indicates it is highly likely that the disturbed area runoff entered Grassy Trail Creek.

3. Would or did the damage or impact remain within the exploration or permit area? No

Within Exp/Permit Area 0-7*
Outside Exp/Permit Area 8-25*

*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 12

PROVIDE AN EXPLANATION OF POINTS

Inspector indicates there was evidence of erosion on the downslope at the point where the berm was breached. Because of the amount of coal fines in the disturbed area, inspector estimates the potential for damage is moderate to high.

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? _____

RANGE

Potential hindrance 1-12
Actual hindrance 13-25

Assign points based on the extent to which enforcement is hindered by the violation. ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS _____

TOTAL SERIOUSNESS POINTS (A or B) 26

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 - NEGLIGENCE;
OR Was this violation the result of reckless, knowing, or intentional conduct? IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS

Inspector indicates the operator should have repaired the damaged drainage controls when the berm was breached. He indicates the runoff had been entering the undisturbed channel for an extended period of time. Inspector indicates the operator had been working on and off to clean debris out of the channel.

IV. GOOD FAITH MAX -20 PTS. (either A or B)

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)

*Assign in upper or lower half of range depending on abatement occurring in 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 SITUATION

- 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, or the plan submitted for abatement was incomplete)

EASY OR DIFFICULT ABATEMENT? Difficult ASSIGN GOOD FAITH POINTS -15

PROVIDE AN EXPLANATION OF POINTS
NOV was to be abated by August 22, 1986. NOV was terminated effective August 20, 1986.

V.	<u>ASSESSMENT SUMMARY FOR</u>	<u>N86-4-9-1</u>
	I. TOTAL HISTORY POINTS	<u>25</u>
	II. TOTAL SERIOUSNESS POINTS	<u>26</u>
	III. TOTAL NEGLIGENCE POINTS	<u>8</u>
	IV. TOTAL GOOD FAITH POINTS	<u>-15</u>
	TOTAL ASSESSED POINTS	<u>44</u>
	TOTAL ASSESSED FINE	<u>\$760</u>

Mike Earl

ASSESSMENT DATE 9/9/86 ASSESSMENT OFFICER Mike Earl