

• • 0007

Document Information Form

Mine Number: C/007/007

File Name: Outgoing

To: DOGM

From:

Person N/A

Company STATE OF UTAH.

Date Sent: N/A

Explanation:

ASSESSMENT CONFERENCE IN THE MATTER OF STATE VIOLATIONS AND

PROPOSED ASSESSMENT.

cc:

File in:
C/007, 007, Outgoing

Refer to:

- Confidential
- Shelf
- Expandable

Date _____ For additional information

BEFORE THE ASSESSMENT CONFERENCE
OFFICER, BOARD OF OIL, GAS AND MINING
STATE OF UTAH

ASSESSMENT CONFERENCE IN THE	:	RESPONSE BY THE DIVISION OF
MATTER OF STATE VIOLATIONS AND	:	OIL, GAS AND MINING, TO
PROPOSED ASSESSMENT N89-26-1-1	:	SUNNYSIDE RECLAMATION &
and C89-25-1-1, PERMIT NO.	:	SALVAGE, INC.'S OBJECTION
ACT/007/007, FOLDER NO. 5,	:	TO FACT OF VIOLATIONS AND
SUNNYSIDE RECLAMATION & SALVAGE	:	CESSATION ORDERS AND
INC., CARBON COUNTY, UTAH	:	PROPOSED ASSESSMENTS
		N89-26-1-1 and C89-25-1-1

The following is presented in response to the above-referenced written objections filed by Sunnyside Reclamation & Salvage, Inc. at the time of the Assessment Conference.

N89-26-1-1 and C89-25-1-1

1. The discussion in part 5 of SR&S's Statement Of Facts concerning the issuance of C89-25-1-1, as well as the document in general, fail to reference a phone conversation between Bill Balaz, SR&S Mine Manager, and Dianne Nielson, Director of DOGM. At the time Dr. Nielson explained to Mr. Balaz that a Failure To Abate CO (FTA-CO), not an NOV, would be issued for this violation. This action was taken by DOGM because:

- The discharge from Whitmore Pond was considered to be a continuation of the conditions which constituted N89-26-1-1;
- While DOGM had considered SR&S actions as of April 12 1989 to have been sufficient to abate the pond; and was premature, as evidenced by

File in:

- Confidential
- Shelf
- Expandable

Refer to Record No 0007 Date _____

In C/ 007, 007, Outgoing

For additional information

BEFORE THE ASSESSMENT CONFERENCE
OFFICER, BOARD OF OIL, GAS AND MINING
STATE OF UTAH

ASSESSMENT CONFERENCE IN THE	:	RESPONSE BY THE DIVISION OF
MATTER OF STATE VIOLATIONS AND	:	OIL, GAS AND MINING, TO
PROPOSED ASSESSMENT N89-26-1-1	:	SUNNYSIDE RECLAMATION &
and C89-25-1-1, PERMIT NO.	:	SALVAGE, INC.'S OBJECTION
ACT/007/007, FOLDER NO. 5,	:	TO FACT OF VIOLATIONS AND
SUNNYSIDE RECLAMATION & SALVAGE	:	CESSATION ORDERS AND
INC., CARBON COUNTY, UTAH	:	PROPOSED ASSESSMENTS
		N89-26-1-1 and C89-25-1-1

The following is presented in response to the above-referenced written objections filed by Sunnyside Reclamation & Salvage, Inc. at the time of the Assessment Conference.

N89-26-1-1 and C89-25-1-1

1. The discussion in part 5 of SR&S's Statement Of Facts concerning the issuance of C89-25-1-1, as well as the document in general, fail to reference a phone conversation between Bill Balaz, SR&S Mine Manager, and Dianne Nielson, Director of DOGM. At the time Dr. Nielson explained to Mr. Balaz that a Failure To Abate CO (FTA-CO), not an NOV, would be issued for this violation. This action was taken by DOGM because:
 - The discharge from Whitmore Pond was considered to be a continuation of the conditions which constituted N89-26-1-1;
 - While DOGM had considered SR&S actions as of April 12, 1989, to have been sufficient to abate N89-26-1-1, that conclusion was premature, as evidenced by the additional discharge from the pond; and

- If the discharge was not considered as a FTA-CO, it would have been addressed as a separate Notice of Violation. It was recognized that a second NOV for the same type of violation would accrue to a pattern of violations. It was also considered that issuance of a second NOV within the original time frame proposed by DOGM for abatement, i.e. prior to April 28, could be considered inappropriate.

During the phone conversation, Dr. Nielson specifically discussed the implications of issuing an FTA-CO as opposed to a NOV. Furthermore, Dr. Nielson indicated that if the procedure of issuing the FTA-CO would be considered contentious, DOGM would issue a NOV instead.

In point of fact, the second discharge from Whitmore Pond can be cited in one of two ways, and DOGM considers that to be within the discretion of the Assessment Conference Officer, where either:

- The fact of the violation is upheld through the FTA-CO, or
- The FTA-CO will be considered to be procedurally incorrect, and it will be replaced by a NOV.

In any case, there is no basis for discounting the fact of violation, as request in the Objection, by the vacation of C89-25-1-1 without simultaneously issuing an NOV.

2. In part 6 of the Statement Of Facts, SR&S implies that there was no violation on April 18-19 because water samples were in compliance with TSS requirements. However, C89-25-1-1 is not strictly defined as a violation of TSS requirements, but rather "failure to protect fish, wildlife and related environmental values" and "failure to cease deposition of oil and or flocculated oil into Grassy Trail Creek."
3. As noted in part 15 of the Statement Of Facts, the Utah Water Pollution Control Committee (Committee) has issued SR&S Notices of Violations and Order for the same incident which led to N89-26-1-1. However, that Committee is acting under its specific authority as the issuing agency of the UPDES Permit, not under the coal regulatory program. DOGM does, however, recognize the need to avoid duplicate penalty

fees for the incident. The Committee and SR&S established a proposed settlement agreement. In reducing the penalty amount of that settlement, the Committee considered the potential penalty amount to be imposed by DOGM. DOGM, in discussion with the Committee's representative, has agreed to limit its penalty collection, with any excess final penalty amount accruing to the Committee's settlement agreement. By so doing, DOGM and the Committee have avoided any potential double jeopardy in the finalization of fines.

Furthermore, DOGM will not require separate payment to the Division of Wildlife Resources to compensate for the impacts to fish and stream habitat, provided that those costs are covered, as originally proposed, through the Committee's settlement agreement.

5. Based on discussions and technical presentations by and between DOGM, the Committee, SR&S and its consultant, and Wildlife Resources, SR&S will not be required to vacuum Grassy Trail Creek, as discussed in the Objections. A copy of the letter from DOGM concerning that decision is attached (Exhibit A).

RESPECTFULLY SUBMITTED THIS 8th day of December, 1989



Dianne R. Nielson
Director
Division of Oil, Gas and Mining
State of Utah