

0043



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Norman H. Bangertter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

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3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

me

February 14, 1990

CERTIFIED RETURN RECEIPT REQUESTED
P 074 978 652

Mr. William P. Balaz
Sunnyside Reclamation and Salvage Inc.
P. O. Box 99
Sunnyside, Utah 84539

Dear Mr. Balaz:

Re: Finalized Assessment for State Violation Numbers C89-25-1-1, and C89-25-2-1, ACT/007/007, Folder #5, Carbon County, Utah

The civil penalties for the above-referenced violations have been finalized. Please note that no fine has been assessed either violation. These violations were vacated; therefore, no further action is necessary. The assessments have been finalized as a result of a review of all pertinent data and facts including those presented in the assessment conference by you or your representative and the Division of Oil, Gas and Mining inspector.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. Failure to comply with this requirement will result in a waiver of your right of further recourse.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Barbara W. Roberts".

Barbara W. Roberts
Assessment Conference Officer

jb
cc: John C. Kathmann, OSM, AFO
MN37/35

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

COMPANY/MINE Sunnyside Reclamation/Sunnyside

NOV # C89-25-2-1

PERMIT # ACT/007/007

VIOLATION 1 OF 1

Assessment Date 2/13/90

Assessment Officer Barbara W. Roberts

Nature of Violation: Deposition of coal fines into Grassy Trail Creek

Date of Vacation: 6/20/89

	<u>Proposed Assessment</u>	<u>Final Assessment</u>
(1) History/Prev. Violations	<u>8</u>	<u>0</u>
(2) Seriousness		
(a) Probability of Occurrence	<u>20</u>	<u>0</u>
Extent of Damage	<u>25</u>	<u>0</u>
(b) Hindrance to Enforcement	<u> </u>	<u> </u>
(3) Negligence	<u>10</u>	<u>0</u>
(4) Good Faith	<u>-</u>	<u>-</u>
TOTAL	<u>63</u>	<u>0</u>
TOTAL ASSESSED FINE		<u>\$ - 0 -</u>

3. Narrative:

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

Vacated - see attachment

jb
Attachment
MN34/36

UTAH DIVISION OF OIL, GAS AND MINING

FINAL ASSESSMENT FOR C89-25-2-1

SUNNYSIDE RECLAMATION AND SALVAGE
ACT/007/007

NATURE OF THE CESSATION ORDER

This Cessation Order was issued as a result of inspector Tom Munson's determination that certain activities conducted by Sunnyside Reclamation and Salvage ("SRS") created the threat of significant imminent harm to the environment and thus such activities should be ceased immediately. More specifically, Inspector Munson enumerated the alleged violation as follows:

Conducting mining activities without a permit, (deposit of sediment laden mine water into Grassy Trail Creek);

Failure to protect fish, wildlife and related environmental values;

Failure to pass sediment laden mine water (Sunnyside storage tanks) through a sediment control structure, pond, or treatment facility prior to leaving the permit area.

Inspector Munson cited § 40-10-9 U.C.A., UMC 817.97, and UMC 817.42 (a)(1) as the provisions allegedly violated by SRS.

CASE HISTORY

An assessment conference was held on November 17, 1989, during which both the fact and the amount of the penalty assessed were challenged by SRS. Counsel for SRS, Denise Dragoo, submitted briefs at the conference and called witnesses to present testimony. The Division of Oil, Gas and Mining ("Division") presented testimony and requested additional post-conference time to respond to the briefs submitted by SRS. The Division was granted the time to respond.

Following the conference and the receipt of the Division's responsive briefs and SRS's reply to the Division's response, I reviewed the evidence and testimony presented. In addition, I reviewed the statutory and case law applicable to the issues raised.

DECISION

After reviewing the evidence and the applicable law, and for reasons more fully set out below, C89-25-2-1 is vacated.

STATEMENT OF REASONS

Inspector Munson's first reason to issue the violation to SRS was for "[c]onducting mining operations without a permit...."

There is no merit to this charge. It is clear that SRS indeed has a permit to conduct mining activities at the Sunnyside Mine. Simply because an action taken by an operator is not specified as approved by a permit does not mean that the operator has no permit. If such were the case, every activity conducted without approval could be cited as operating without a permit. This would be a departure from the Division's established course of action with results that cannot be intended by the Division.

Next cited is the "[f]ailure to protect fish, wildlife and related environmental values."

The rule listed as having been violated is UMC 817.97. The pertinent portion of the rule is as follows:

- (a) Any person conducting underground coal mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values....[Emphasis added]

The Division presented no evidence to support a finding that SRS failed to use the best technology currently available. The facts indicate that a pipeline owned by the city of Sunnyside simply came apart at a joint. There was no allegation that the pipeline was in poor repair, that it had failed on previous occasions as a result of the type of bolted collar used to join the pipe or that SRS otherwise had knowledge or should have known that the pipe was deficient. In fact, the record is silent on the technological sufficiency of the pipeline.

Also at issue is the extent to which fish and wildlife values were harmed. The Division presented no specific evidence as to how these values had been impacted. SRS's limnology expert, Dr. Richard Baumann, testified that certain sensitive insect larvae were successfully hatching in Grassy Trail Creek below the point of the pipe break.

Without some evidence other than implication, I cannot find that the values intended for protection under UMC 817.97 were harmed by the pipe break incident. This is especially true in an area where the slopes and streambeds of the Creek are already highly impacted by previously deposited coal fines. In cases such as this, it is critical to support an allegation with specific evidence of how the cited deposition incident has affected the values to be protected.

This is not to say that the Division must present a body count. A prima facie case can be made by presenting credible evidence of the impact that increased coal fines at the level estimated to have been released would have upon the fish and invertebrate populations.

Finally, Inspector Munson indicated on the Order that SRS had failed to "... pass sediment laden mine water (Sunnyside storage tanks) through a sediment control structure, pond, or treatment facility prior to leaving the permit area."

The cited rule, UMC 817.42(a)(1), directs, in part, that:

Any discharge of water from underground workings to surface waters which does not meet the effluent limitations of this section shall...be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area.

The Division presented no evidence to support a finding that the water discharging from the separated pipe had violated the effluent limitation established by the UPDES permit issued by the Department of Health, Water Pollution Control. Except in rare occasions, a violation of the UPDES permit can only be sustained through laboratory analysis of properly collected water samples which indicates the discharge exceeded the permitted effluent limits. There was no evidence that the subject discharge violated SRS's UPDES permit. In fact, the only evidence presented revealed that the discharge was within the limits set by the permit.

Even though the above analysis is dispositive of the issues in this case, I wish to discuss the question raised as to whether the law supports the issuance of a cessation order pursuant to § 40-10-22(1)(b) and UMC 843.11(a)(1) under the circumstances presented in this case. I find that the law does not.

UMC 843.11(a)(1) specifically states that the Division must find:

(a)(1)...any condition or practice, or any violation of the Act, this chapter, the state program, or any condition of [a]...permit imposed under the program, the Act or this chapter, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

Both "significant, imminent environmental harm to land, air, or water resources" and "imminent danger to the health and safety of the public" are terms defined in the rules. Each speaks in terms of future or present danger or harm which would likely occur or would continue to exist but for the intervention of the Division.

Neither of those circumstances was evident in this case. By the time of the inspection, there was no longer any threat of imminent harm to the environment or the public health. The discharge was running clear. The incident giving rise to the violation, if any, had passed.

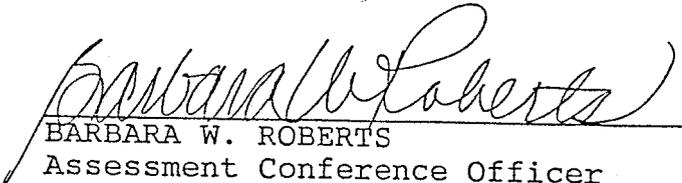
Finally, absent additional evidence to support a finding of imminent harm, the mere absence of a permit is not sufficient evidence to sustain the issuance of a cessation order for the threat of imminent harm.

Under the circumstances presented in this matter, the Division was not authorized by law to issue a cessation order under § 40-10-22(1)(b) or UMC 843.11(a)(1).

Therefore, for the reasons set out above, C89-25-2-1 is vacated.

Dated February 6, 1990.

STATE OF UTAH


BARBARA W. ROBERTS

Assessment Conference Officer

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

COMPANY/MINE Sunnyside Reclamation/Sunnyside

NOV # C89-25-1-1

PERMIT # ACT/007/007

VIOLATION 1 OF 1

Assessment Date 2/14/90

Assessment Officer Barbara W. Roberts

Nature of Violation: Failure to abate N89-26-1-1 (Initial oil spill)

Date of Vacation: 6/20/89

	<u>Proposed Assessment</u>	<u>Final Assessment</u>
(1) History/Prev. Violations	_____	<u>0</u>
(2) Seriousness		
(a) Probability of Occurrence	_____	<u>0</u>
Extent of Damage	_____	<u>0</u>
(b) Hindrance to Enforcement	_____	<u>0</u>
(3) Negligence	_____	<u>0</u>
(4) Good Faith	_____	<u>-</u>
TOTAL	_____	<u>0</u>
TOTAL ASSESSED FINE		<u>\$ - 0 -</u>

3. Narrative:

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

Proposed Assessment was Failure to Abate Notice of Violation #N89-26-1-1, April 15, 1989 through April 19, 1989. 5 days @ \$750.00 per day = \$3750.00

Final Assessment was vacated - see attachment

jb
 Attachment
 MN34/37

UTAH DIVISION OF OIL, GAS AND MINING

FINAL ASSESSMENT FOR C89-25-1-1

SUNNYSIDE RECLAMATION AND SALVAGE
ACT/007/007

NATURE OF THE CESSATION ORDER

This Cessation Order ("CO") was issued as a result of inspector Tom Munson's determination that Sunnyside Reclamation and Salvage ("SRS") had failed to abate the problems cited in Notice of Violation ("NOV") N89-26-1-1. More specifically, Inspector Munson enumerated the alleged violation as follows:

Failure to protect fish, wildlife and related environmental values.

Failure to cease deposition of oil and or flocculated oil into Grassy Trail Creek.

Inspector Munson cited UMC 817.97 and UMC 843.11(b) as the provisions allegedly violated by SRS.

CASE HISTORY

An assessment conference was held on November 17, 1989, during which both the fact and the amount of the penalty assessed were challenged by SRS. Counsel for SRS, Denise Dragoo, submitted briefs at the conference and called witnesses to present testimony. The Division of Oil, Gas and Mining ("Division") presented testimony and requested additional post-conference time to respond to the briefs submitted by SRS. The Division was granted the time to respond.

Following the conference and the receipt of the Division's responsive briefs and SRS's reply to the Division's response, I reviewed the evidence and testimony presented. In addition, I reviewed the statutory and case law applicable to the issues raised.

DECISION

After reviewing the evidence and the applicable law and for reasons set out below, C89-25-1-1 is vacated.

STATEMENT OF THE CASE

The facts of this case are somewhat unique and should be set out as the starting point of my analysis.

As a result of a discharge of soluble oil into Grassy Trail Creek, NOV N89-26-1-1 was issued to SRS by Division inspector Bill Malencik on March 29, 1989. The NOV set out an abatement plan but was silent as to a date to complete the plan. Therefore, on April 6, 1989, the NOV was modified, in part, to include an abatement date of April 28, 1989.

On April 12, 1989, after determining that SRS had met the abatement requirements, Inspector Malencik terminated the NOV and delivered a copy of the termination notice to a representative of SRS. For reasons not fully explained in the assessment conference, the Division determined that the NOV had been prematurely terminated and thereafter deemed the termination notice revoked. Although there is some contradictory evidence as to whether SRS was advised of this action, no written document was offered into evidence indicating that the Operator had been notified regarding the alleged reinstatement of the NOV.

Then, on April 19, 1989, Division inspector Tom Munson inspected the site and observed what he determined to be oil and grease entering Grassy Trail Creek from the Whitmore mine water discharge pond. As a result, Inspector Munson issued a failure-to-abate CO for SRS's failure to abate "...[v]iolation No. 1 included in Notice of Violation No. N89-26-1-1 within time for abatement originally fixed or subsequently extended."

STATEMENT OF REASONS

There are two reasons for my decision to vacate this CO, either one of which is sufficient by itself to dispose of the violation notice.

First, the NOV as written and later modified to include an abatement date was terminated by the Division on April 12, 1989. Inspector Malencik issued the termination notice after water samples taken at intervals prior to the termination date showed that the discharge was in compliance with the UPDES effluent limits.

UMC 843.12(e) provides, in part, that:

(e) The Director, Division, or their authorized representative shall

terminate a notice of violation by written notice to the person to whom it was issued, when he or she determines that all violations listed in the notice of violation have been abated.

The evidence supports the finding that the Division made the determination that the cited violation had been abated and thereafter terminated the NOV.

Inspector Malencik's conduct in terminating the NOV was not out of the ordinary for a UPDES violation. There is nothing which indicates that Inspector Malencik acted outside his authority in terminating the NOV nor is there any indication of coercion. Except in rare instances such as an ultra vires action or coercion, the law does not authorize the Division to unilaterally revoke an NOV termination notice.

Since N89-26-1-1 was terminated as a result of the Division's finding that the requirements for abatement had been met, there was no conduct on the part of SRS to support the Division's issuance of a failure-to-abate CO.

Although the above analysis is dispositive of the issues presented in this matter, I feel that it would be useful to evaluate the remaining arguments offered by the parties.

Assuming for the sake of discussion that the Division had the authority to revoke the termination notice or that the operator had agreed to such an action, the question then becomes whether the Division could by law issue a CO while the NOV was still in the abatement period. After reviewing the statute, I have determined that the law does not permit such an action.

Section 40-10-22(1)(c) provides for both the issuance of NOV's and failure-to-abate COs. The pertinent portion states:

If upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and upon the written finding of the division, the division finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining and reclamation operations or the portion of same relevant to the violation. [Emphasis added]

In the case at hand, the NOV was still in the abatement

period established by the April 6, 1989, modification. In most cases, the Division tolerates and even expects that the conditions giving rise to the violation will remain out of compliance for a time subsequent to the issuance of an NOV. An abatement period is set by an inspector based upon the estimated period necessary for the operator to come into compliance. Interim measures are often set to mitigate apparent environmental impacts during the abatement period.

It is true that the Division is authorized to issue additional NOV's for the same area assuming that the character of the alleged violation is materially different from any outstanding NOV which is still within the abatement period set or as extended.

This is not to say that the Division is powerless to stop illegal discharges which occur during an abatement period. Cessation Orders issued pursuant to § 40-10-22(1)(b) are always authorized whenever the Division determines that present or future harm is or probably will occur to the environment or the public health or safety.

Finally, I wish to respond to the Division's request that I modify the failure-to-abate CO to rectify any procedural irregularities. I agree with the Division that the Assessment Conference Officer has the authority to make modifications as a result of evidence presented at the conference such as changing a CO to an NOV. In this case, however, the simple modification to an NOV would not accomplish what the Division attempted to do with the issuance of the CO.

The CO was written for the "[f]ailure to protect fish, wildlife and related environmental values" and the "[f]ailure to cease deposition of oil or flocculated oil into Grassy Trail Creek." No evidence was presented to support the allegation that fish and wildlife values had been harmed. Further, the allegation that SRS had failed to cease deposition of oil would not be at issue in an NOV written as a result of an unrelated incident.

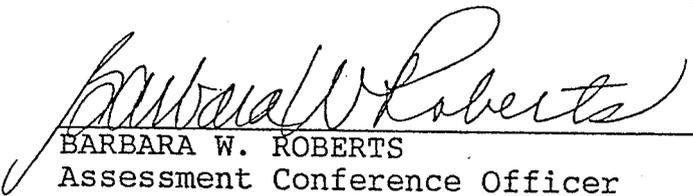
In order for the converted NOV to be sustainable, I would have to imply evidence of fish impact or else substantively modify the second charge to describe a new incident involving a

violative discharge. Neither of these actions are procedural in nature and I cannot change the cause of action after the matter has been argued.

For the reasons stated in the above analysis, C89-25-1-1 is vacated.

Dated February 6, 1990.

STATE OF UTAH


BARBARA W. ROBERTS
Assessment Conference Officer

Mine file

UTAH DIVISION OF OIL, GAS AND MINING

FINAL ASSESSMENT FOR C89-25-1-1

SUNNYSIDE RECLAMATION AND SALVAGE

ACT/007/007

NATURE OF THE CESSATION ORDER

This Cessation Order ("CO") was issued as a result of inspector Tom Munson's determination that Sunnyside Reclamation and Salvage ("SRS") had failed to abate the problems cited in Notice of Violation ("NOV") N89-26-1-1. More specifically, Inspector Munson enumerated the alleged violation as follows:

Failure to protect fish, wildlife and related environmental values.

Failure to cease deposition of oil and or flocculated oil into Grassy Trail Creek.

Inspector Munson cited UMC 817.97 and UMC 843.11(b) as the provisions allegedly violated by SRS.

CASE HISTORY

An assessment conference was held on November 17, 1989, during which both the fact and the amount of the penalty assessed were challenged by SRS. Counsel for SRS, Denise Drago, submitted briefs at the conference and called witnesses to present testimony. The Division of Oil, Gas and Mining ("Division") presented testimony and requested additional post-conference time to respond to the briefs submitted by SRS. The Division was granted the time to respond.

Following the conference and the receipt of the Division's responsive briefs and SRS's reply to the Division's response, I reviewed the evidence and testimony presented. In addition, I reviewed the statutory and case law applicable to the issues raised.

DECISION

After reviewing the evidence and the applicable law and for reasons set out below, C89-25-1-1 is vacated.

STATEMENT OF THE CASE

The facts of this case are somewhat unique and should be set out as the starting point of my analysis.

As a result of a discharge of soluble oil into Grassy Trail Creek, NOV N89-26-1-1 was issued to SRS by Division inspector Bill Malencik on March 29, 1989. The NOV set out an abatement plan but was silent as to a date to complete the plan. Therefore, on April 6, 1989, the NOV was modified, in part, to include an abatement date of April 28, 1989.

On April 12, 1989, after determining that SRS had met the abatement requirements, Inspector Malencik terminated the NOV and delivered a copy of the termination notice to a representative of SRS. For reasons not fully explained in the assessment conference, the Division determined that the NOV had been prematurely terminated and thereafter deemed the termination notice revoked. Although there is some contradictory evidence as to whether SRS was advised of this action, no written document was offered into evidence indicating that the Operator had been notified regarding the alleged reinstatement of the NOV.

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STATEMENT OF REASONS

There are two reasons for my decision to vacate this CO, either one of which is sufficient by itself to dispose of the violation notice.

First, the NOV as written and later modified to include an abatement date was terminated by the Division on April 12, 1989. Inspector Malencik issued the termination notice after water samples taken at intervals prior to the termination date showed that the discharge was in compliance with the UPDES effluent limits.

UMC 843.12(e) provides, in part, that:

(e) The Director, Division, or their authorized representative shall

terminate a notice of violation by written notice to the person to whom it was issued, when he or she determines that all violations listed in the notice of violation have been abated.

The evidence supports the finding that the Division made the determination that the cited violation had been abated and thereafter terminated the NOV.

Inspector Malencik's conduct in terminating the NOV was not out of the ordinary for a UPDES violation. There is nothing which indicates that Inspector Malencik acted outside his authority in terminating the NOV nor is there any indication of coercion. Except in rare instances such as an ultra vires action or coercion, the law does not authorize the Division to unilaterally revoke an NOV termination notice.

Since N89-26-1-1 was terminated as a result of the Division's finding that the requirements for abatement had been met, there was no conduct on the part of SRS to support the Division's issuance of a failure-to-abate CO.

Although the above analysis is dispositive of the issues presented in this matter, I feel that it would be useful to evaluate the remaining arguments offered by the parties.

Assuming for the sake of discussion that the Division had the authority to revoke the termination notice or that the operator had agreed to such an action, the question then becomes whether the Division could by law issue a CO while the NOV was still in the abatement period. After reviewing the statute, I have determined that the law does not permit such an action.

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If upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and upon the written finding of the division, the division finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining and reclamation operations or the portion of same relevant to the violation. [Emphasis added]

In the case at hand, the NOV was still in the abatement

period established by the April 6, 1989, modification. In most cases, the Division tolerates and even expects that the conditions giving rise to the violation will remain out of compliance for a time subsequent to the issuance of an NOV. An abatement period is set by an inspector based upon the estimated period necessary for the operator to come into compliance. Interim measures are often set to mitigate apparent environmental impacts during the abatement period.

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Finally, I wish to respond to the Division's request that I modify the failure-to-abate CO to rectify any procedural irregularities. I agree with the Division that the Assessment Conference Officer has the authority to make modifications as a result of evidence presented at the conference such as changing a CO to an NOV. In this case, however, the simple modification to an NOV would not accomplish what the Division attempted to do with the issuance of the CO.

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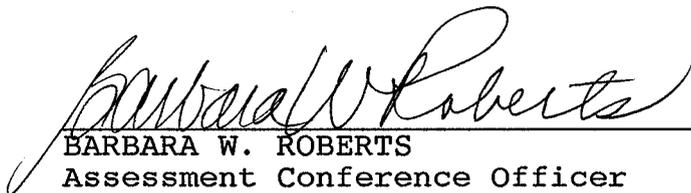
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violative discharge. Neither of these actions are procedural in nature and I cannot change the cause of action after the matter has been argued.

For the reasons stated in the above analysis, C89-25-1-1 is vacated.

Dated February 6, 1990.

STATE OF UTAH


BARBARA W. ROBERTS
Assessment Conference Officer

UTAH DIVISION OF OIL, GAS AND MINING

FINAL ASSESSMENT FOR C89-25-2-1

SUNNYSIDE RECLAMATION AND SALVAGE
ACT/007/007

NATURE OF THE CESSATION ORDER

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Following the conference and the receipt of the Division's responsive briefs and SRS's reply to the Division's response, I reviewed the evidence and testimony presented. In addition, I reviewed the statutory and case law applicable to the issues raised.

DECISION

After reviewing the evidence and the applicable law, and for reasons more fully set out below, C89-25-2-1 is vacated.

STATEMENT OF REASONS

Inspector Munson's first reason to issue the violation to SRS was for "[c]onducting mining operations without a permit...."

There is no merit to this charge. It is clear that SRS indeed has a permit to conduct mining activities at the Sunnyside Mine. Simply because an action taken by an operator is not specified as approved by a permit does not mean that the operator has no permit. If such were the case, every activity conducted without approval could be cited as operating without a permit. This would be a departure from the Division's established course of action with results that cannot be intended by the Division.

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Also at issue is the extent to which fish and wildlife values were harmed. The Division presented no specific evidence as to how these values had been impacted. SRS's limnology expert, Dr. Richard Baumann, testified that certain sensitive insect larvae were successfully hatching in Grassy Trail Creek below the point of the pipe break.

Without some evidence other than implication, I cannot find that the values intended for protection under UMC 817.97 were harmed by the pipe break incident. This is especially true in an area where the slopes and streambed of the Creek are already highly impacted by previously deposited coal fines. In cases such as this, it is critical to support an allegation with specific evidence of how the cited deposition incident has affected the values to be protected.

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Even though the above analysis is dispositive of the issues in this case, I wish to discuss the question raised as to whether the law supports the issuance of a cessation order pursuant to § 40-10-22(1)(b) and UMC 843.11(a)(1) under the circumstances presented in this case. I find that the law does not.

UMC 843.11(a)(1) specifically states that the Division must find:

(a)(1)...any condition or practice, or any violation of the Act, this chapter, the state program, or any condition of [a]...permit imposed under the program, the Act or this chapter, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

Both "significant, imminent environmental harm to land, air, or water resources" and "imminent danger to the health and safety of the public" are terms defined in the rules. Each speaks in terms of future or present danger or harm which would likely occur or would continue to exist but for the intervention of the Division.

Neither of those circumstances was evident in this case. By the time of the inspection, there was no longer any threat of imminent harm to the environment or the public health. The discharge was running clear. The incident giving rise to the violation, if any, had passed.

Finally, absent additional evidence to support a finding of imminent harm, the mere absence of a permit is not sufficient evidence to sustain the issuance of a cessation order for the threat of imminent harm.

Under the circumstances presented in this matter, the Division was not authorized by law to issue a cessation order under § 40-10-22(1)(b) or UMC 843.11(a)(1).

Therefore, for the reasons set out above, C89-25-2-1 is vacated.

Dated February 6, 1990.

STATE OF UTAH


BARBARA W. ROBERTS
Assessment Conference Officer