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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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

October 22, 1992

CERTIFIED RETURN RECEIPT
P 074 979 303

Mr. Joe Fielder
Sunnyside Coal Company
P.O. Box 99
Sunnyside, Utah 84539

Dear Mr. Fielder:

Re: Proposed Assessments for State Violation Nos. N92-32-11-1 and N92-32-12-1, Sunnyside Coal Company, Sunnyside Mine, ACT/007/007, Folder #5, Carbon County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed are the proposed civil penalty assessments for the above-referenced violations. The violations were issued by Division Inspector, Henry Sauer on September 25, 1992. Rule R645-401-600 et. sec. has been utilized to formulate the proposed penalties. By these rules, any written information which was submitted by you or your agent, within fifteen (15) days of receipt of the Notice of Violation, has been considered in determining the facts surrounding the violation and the amount of penalties.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of these violations, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the proposed penalty assessments, you should file a written request for an Assessment Conference within 30 days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of violations will stand, the proposed penalties will become final, and the penalties will be due and payable within thirty (30) days of the proposed assessments. Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,

Joseph C. Helfrich
Assessment Officer

jbe
Enclosure
cc: Bernie Freeman, OSM

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

COMPANY/MINE Sunnyside Coal Company/Sunnyside Mine **NOV** #N92-32-11-1

PERMIT # ACT/007/007 VIOLATION 1 OF 1

ASSESSMENT DATE 10/22/92 ASSESSMENT OFFICER Joseph C. Helfrich

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 10/22/92 EFFECTIVE ONE YEAR TO DATE 10/22/91

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
N92-32-2-1	06/28/92	1
N92-32-3-1	07/18/92	1
N92-32-4-1	07/18/92	1
N92-32-5-1	06/28/92	1
N92-25-2-1	06/14/92	1
N92-32-7-1	08/30/92	1
N92-32-8-1	08/30/92	1
N92-32-9-1	06/28/92	1
N92-20-2-1	09/12/92	1
N92-32-10-1	09/26/92	1

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 10

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 Assessment Officer 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? Hindrance

A. Event Violations Max 45 PTS

1. What is the event which the violated standard was designed to prevent?

_____

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

. . . PROBABILITY	RANGE
. . . None	0
. . . Unlikely	1-9
. . . Likely	10-19
. . . Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS ____

PROVIDE AN EXPLANATION OF POINTS

_____

3. What is the extent of actual or potential damage?

RANGE 0 - 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 ____

PROVIDE AN EXPLANATION OF POINTS

_____

B. Hindrance Violations MAX 25 PTS

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

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS

Lack of water monitoring potentially hindered the inspector from evaluating compliance.

TOTAL SERIOUSNESS POINTS (A or B) 10

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 Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 18

PROVIDE AN EXPLANATION OF POINTS

The permittee was in violation of a specific permit condition.

IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)

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)

(Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

* 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**

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)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? ____ **ASSIGN GOOD FAITH POINTS** __-0__

PROVIDE AN EXPLANATION OF POINTS

Compliance for the violation required continuation of meeting the conditions and terms of the permit, specifically water monitoring.

V. ASSESSMENT SUMMARY FOR N92-32-11-1

I.	TOTAL HISTORY POINTS	10
II.	TOTAL SERIOUSNESS POINTS	10
III.	TOTAL NEGLIGENCE POINTS	18
IV.	TOTAL GOOD FAITH POINTS	- 0
	TOTAL ASSESSED POINTS	38
	TOTAL ASSESSED FINE	$ 560.00

jbe

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

COMPANY/MINE Sunnyside Coal Company/Sunnyside Mine **NOV** #N92-32-12-1

PERMIT # ACT/007/007 VIOLATION 1 OF 1

ASSESSMENT DATE 10/22/92 ASSESSMENT OFFICER Joseph C. Helfrich

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 10/22/92 EFFECTIVE ONE YEAR TO DATE 10/22/91

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
N92-32-2-1	06/28/92	1
N92-32-3-1	07/18/92	1
N92-32-4-1	07/18/92	1
N92-32-5-1	06/28/92	1
N92-25-2-1	06/14/92	1
N92-32-7-1	08/30/92	1
N92-32-8-1	08/30/92	1
N92-32-9-1	06/28/92	1
N92-20-2-1	09/12/92	1
N92-32-10-1	09/26/92	1

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 10

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 Assessment Officer 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? Offsite Sediment Loading

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

. . . PROBABILITY	RANGE
. . . None	0
. . . Unlikely	1-9
. . . Likely	10-19
. . . Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 5

PROVIDE AN EXPLANATION OF POINTS

_____

3. What is the extent of actual or potential damage?

RANGE 0 - 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 0

PROVIDE AN EXPLANATION OF POINTS

_____

B. Hindrance Violations MAX 25 PTS

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

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS

_____

TOTAL SERIOUSNESS POINTS (A or B) 5

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 Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

The need for maintaining sediment control structures had been conveyed on numerous occasions throughout the past two calendar years to the permittee, thus a greater degree of fault is assessed.

IV. **GOOD FAITH MAX 20 PTS.** (EITHER A or B) (Does not apply to violations requiring no abatement measures.)

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)

(Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

* 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**

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)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? ____ **ASSIGN GOOD FAITH POINTS** ___-0___

PROVIDE AN EXPLANATION OF POINTS

_____

V. ASSESSMENT SUMMARY FOR N92-32-12-1

I.	TOTAL HISTORY POINTS	10
II.	TOTAL SERIOUSNESS POINTS	5
III.	TOTAL NEGLIGENCE POINTS	20
IV.	TOTAL GOOD FAITH POINTS	- 0
	TOTAL ASSESSED POINTS	35
	TOTAL ASSESSED FINE	$ 500.00

jbe