

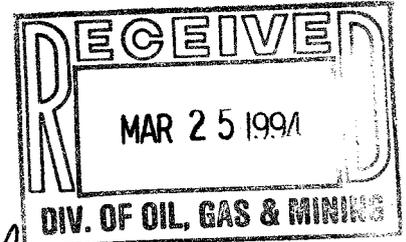
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State of Utah
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY

Michael O. Leavitt
Governor
Dianne R. Nielson, Ph.D.
Executive Director
Don A. Ostler, P.E.
Director

288 North 1460 West
P.O. Box 144870
Salt Lake City, Utah 84114-4870
(801) 538-6146
(801) 538-6016 Fax
(801) 536-4414 T.D.D.



March 24, 1994

*HL TS
Route to Henry/Tom
then file ACT/007/007 # 2*

CERTIFIED MAIL
(Return Receipt Requested)

Peter Hess, Env. Coordinator
Sunnyside Coal Company
P.O. Box 10
Sunnyside, Utah 84539

RE: Permit No. UT0022942, Sunnyside Coal
Company, Public Notice of Proposed Settlement
Agreement Docket No. 193-05SA

Dear Mr. Hess:

Enclosed is a copy of the Public Notice and the proposed Settlement Agreement between the Utah Water Quality Board and Sunnyside Coal Company.

If you have any questions with regards to this matter, please contact Mike Herkimer at (801) 538-6146.

Sincerely,

Donald A. Hilden, Ph.D., Manager
Permits & Compliance Section

Enclosure

KC:kc

- cc: Cláron D. Bjork, Southeastern Utah District Health Dept. w/encl.
- Dave Ariotti, District Engineer w/encl.
- Don Ostler, Executive Secretary, Division of Water Quality w/encl.
- Fred Nelson, Attorney General's Office w/encl.
- Deldi Reyes, EPA Region VIII, Water Management Division w/encl.
- Dianne Nielson, Department of Environmental Quality w/encl.
- Darren Haddock, DOGM w/encl.
- Mark Holden, Division of Wildlife Resources w/encl.

UTAH WATER QUALITY BOARD

IN THE MATTER OF	:	DOCKET NO. I93-05SA
SUNNYSIDE COAL COMPANY	:	SETTLEMENT AGREEMENT
UPDES PERMIT NO. UT0022942	:	

This **SETTLEMENT AGREEMENT** and **CONSENT ORDER** (hereinafter "**AGREEMENT**") is between **SUNNYSIDE COAL COMPANY** (hereinafter "**SUNNYSIDE**") and the **UTAH WATER QUALITY BOARD** (hereinafter "the **BOARD**"), concerning discharges from **SUNNYSIDE's** 001 and 015 discharge points to Grassy Trail Creek.

1. The **BOARD** has authority to administer the *Utah Water Quality Act as amended 1953*, (hereinafter "the **ACT**").
2. The **BOARD** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System* (NPDES) permit program under the *Federal Clean Water Act* (CWA).
3. The **EXECUTIVE SECRETARY** of the **BOARD** (hereinafter the "**EXECUTIVE SECRETARY**") will administer the terms and provisions of this **AGREEMENT**.
4. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER** (Docket Number I93-05) issued to **SUNNYSIDE** on November 15, 1993 by the **BOARD**. This **AGREEMENT** constitutes a settlement of the violations of **SUNNYSIDE's** Utah Pollutant Discharge Elimination System (UPDES) permit No. UT0022942 cited in said **ORDER**. This **AGREEMENT** does not relieve **SUNNYSIDE** from any other obligation imposed under the **ACT**, the *Utah Wastewater Disposal Regulations*, the **UPDES** permit, or any other State or Federal laws.
5. **SUNNYSIDE** is assessed a penalty of \$6,600.00, with \$4,000.00 of this amount suspended based upon the conditions in paragraph 6 and the remainder of this amount, \$2,600.00, due and payable within thirty (30) days of the effective date of this **AGREEMENT**. Payment shall be made by check, to the State of Utah and delivered to the Division of Water Quality, 288 North 1460 West, P. O. Box 144870, Salt Lake City, Utah, 84114-4870.
6. **SUNNYSIDE** has achieved compliance with all requirements of their **UPDES** permit and shall continue to implement all reasonable and practical controls to reduce total suspended solids (TSS) and dissolved oxygen (DO) effluent violations. If **SUNNYSIDE** is determined to be in significant non-compliance as determined by 40 CFR 123.45 Appendix A (attached), within one year of the effective date of this **AGREEMENT**, **SUNNYSIDE** shall remit the suspended \$4,000.00 as specified in paragraph 5 within thirty (30) days of demand by the **EXECUTIVE SECRETARY** for being included on the Quarterly Noncompliance report (QNCR), to the Division of Water Quality 288 North

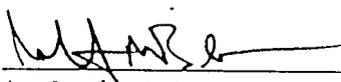
1460 West, P.O. Box 144870, Salt Lake City, Utah, 84114-4870. SUNNYSIDE shall also be subject to further enforcement action(s) for such permit violations.

7. SUNNYSIDE shall adhere to all the conditions set forth in this AGREEMENT unless their performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any natural or other event arising from causes not reasonably foreseeable and beyond the control of the Respondent, which could not have been overcome by due diligence, and which delays or prevents performance by dates required by this AGREEMENT.
8. Nothing contained in this AGREEMENT shall preclude the BOARD from taking appropriate action to abate an imminent endangerment to the public health or the environment should such a situation arise at SUNNYSIDE's facility.
9. Nothing in this AGREEMENT shall preclude SUNNYSIDE from requesting approval from the BOARD for a mitigation project under UAC R317-19.4 in lieu of a portion of the penalties provided by this AGREEMENT. Approval of any mitigation project is solely at the discretion of the BOARD and must meet the requirements of UAC R317-19.4.
10. If agreement by SUNNYSIDE and the BOARD cannot be reached regarding any provision under this AGREEMENT, SUNNYSIDE or the BOARD may commence a proceeding under the *Administrative Procedures Act* and applicable regulations of the BOARD to resolve the dispute. The BOARD'S final decision in any adjudicative proceeding shall be subject to judicial review under applicable State law.
11. Nothing in this AGREEMENT shall constitute a waiver by SUNNYSIDE to raise in its defense any legal or factual contention for future allegations of noncompliance.
12. Nothing in this AGREEMENT shall constitute or be considered a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the STATE may have against SUNNYSIDE or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.
13. This AGREEMENT shall terminate at midnight, fifteen months from the effective date of the AGREEMENT.

AGREED to this _____ Day of _____, 1994.

SUNNYSIDE COAL COMPANY

UTAH WATER QUALITY BOARD

By 
Authorized Agent

By _____
Executive Secretary



State of Utah
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY

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March 24, 1994

Newspaper Agency
143 South Main Street
Salt Lake City, UT 84110

ATTN: Legal Advertising Department

This letter will confirm authorization to publish the attached NOTICE in the Deseret News and Salt Lake Tribune in the first available edition. Please mail the invoice and affidavit of publication to:

Department of Environmental Quality
Division of Water Quality
Attn: Kelly Coleman
288 North 1460 West
P.O. Box 144870
Salt Lake City, Utah 84114-4870

If there are any questions, please contact Kelly Coleman at 538-6146. Thank you for your assistance.

Sincerely,

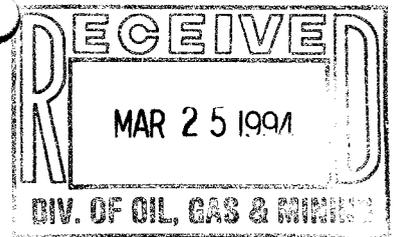
Donald A. Hilden, Ph.D., Manager
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KC/kc

Enclosure



State of Utah
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March 28, 1994

UTAH WATER QUALITY BOARD
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

PUBLIC NOTICE OF SETTLEMENT AGREEMENT

PURPOSE OF PUBLIC NOTICE

This notice is to declare that the State of Utah has reached a settlement agreement with Sunnyside Coal Company. This Public Notice is issued pursuant to Utah Administrative Code R317-8-1.9, to provide opportunity for public comment on the proposed settlement of an enforcement action. The proposed settlement agreement is for the purpose of resolving alleged violations of Utah Code Annotated 19-5 (Water Quality Act), and is a resolution of the enforcement proceedings brought against Sunnyside Coal Company by the Utah Water Quality Board.

PUBLIC COMMENTS

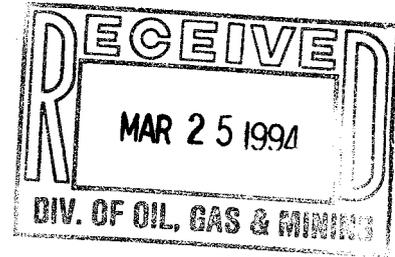
Public comments are invited any time prior to April 27, 1994. Comments may be directed to the Department of Environmental Quality, Division of Water Quality, 288 North 1460 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870.

FURTHER INFORMATION

Additional information may be obtained upon request by calling Mike Herkimer (801) 538-6146, or by writing the aforementioned address. The full text of the proposed settlement agreement and associated documents are available for review during normal working hours (8 am - 5 pm) at the Division of Water Quality.



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