

0017



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Executive Director

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May 18, 1995

ACT/007/011
#5

CERTIFIED RETURN RECEIPT
P 074 976 199

MIKE WATSON

Mark Wayment, President
U.S. Fuel Company
P.O. Box 887
Price, Utah 84501

Re: Proposed Assessment for State Violation No. N94-41-7-1, U.S. Fuel Company, Hiawatha Mine, ACT/007/011, Folder #5, Carbon County, Utah

Dear Mr. Wayment:

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

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued by Division Inspector, Paul Baker on September 21, 1994. Rule R645-401-600 et. sec. has been utilized to formulate the proposed penalty. 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 penalty.

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

1. If you wish to informally appeal the fact of this violation, 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 assessment, you should file a written request for an Assessment Conference within 30 days of receipt



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BB DOGM ACT/007/011 3/29/95 N94-46-3-2 FLDS

MICHAEL WATSON PRESIDENT
US FUEL CO
PO BOX 887
PRICE UT 84501



PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
MICHAEL WATSON PRESIDE NT
US FUEL CO
PO BOX 887
PRICE UT 84501

4. Article Number
P 074 976 186

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Address
X *[Signature]*

6. Signature - Agent
v *[Signature]*

Date of Delivery
APR 3 1995

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

- Print your name, address and ZIP Code in the space below.
- Complete items 1, 2, 3, and 4 on the reverse.
 - Attach to front of article if space permits, otherwise affix to back of article.
 - Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE USE, \$300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

STATE OF UTAH
NATURAL RESOURCES
OIL, GAS, & MINING
3 TRIAD CENTER, SUITE 350
SALT LAKE CITY, UTAH 84180-1203

- STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE, CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)
1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
 2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
 3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article RETURN RECEIPT REQUESTED adjacent to the number.
 4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse RESTRICTED DELIVERY on the front of the article.
 5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
 6. Save this receipt and present it if you make inquiry.
- U.S.G.P.O. 1988-217-132

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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 violation will stand, 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, mail c/o Vicki Bailey.

Sincerely,



Joseph C. Helfrich
Assessment Officer

blb
Enclosure
cc: Donna Griffin, OSM

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

COMPANY/MINE U.S. Fuel Company/Hiawatha Mine

NOV #N94-41-7-1

PERMIT # ACT/007/011

VIOLATION 1 OF 1

ASSESSMENT DATE 5/16/95

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 5/16/95

EFFECTIVE ONE YEAR TO DATE 5/16/94

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>N94-41-5-6 1/6</u>	<u>04-23-95</u>	<u>6</u>
<u>2/6, 3/6, 4/6, 5/6, 6/6</u>	<u>04/23/95</u>	
<u>N94-46-3-2 1/2</u>	<u>04/23/95</u>	<u>1</u>
<u>2/2</u>	<u>04/23/95</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 8

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? B

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?

Actual
RANGE 0 - 25

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

ASSIGN HINDRANCE POINTS 12

PROVIDE AN EXPLANATION OF POINTS

An area within the permit area was disturbed with coal mining and reclamation operations however, the operator did not submit a performance bond for the additional disturbed area. The amount of additional bond would probably be minimal or none as the area in question would have a railroad right of way/ coal Loadout for the post mining land use. The only disturbances for which the operator would need to bond are some stock pile coal and a removal of portable screening and crushing equipment.

TOTAL SERIOUSNESS POINTS (A or B) 12

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 Ordinary

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS

It appeared as though the operator did not believe that the land being used for coal processing needed to be included in the disturbed area and thus would not be required for the additional disturbance. On September 3, 1993 the Division approved an amendment allowing U.S. Fuels customers to process coal within U.S. Fuels permit area but outside their disturbed area if the operator would have realized this amendment would require them to include part of the rail road right of way within their disturbed area and to bond for the disturbance, perhaps they would not have submitted it.

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

Ultimately the operator was required to merely cease the crushing and screening activities within the rail road right of way.

V. ASSESSMENT SUMMARY FOR _____

I.	TOTAL HISTORY POINTS	<u>8</u>
II.	TOTAL SERIOUSNESS POINTS	<u>12</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-0</u>
	TOTAL ASSESSED POINTS	<u>28</u>
	TOTAL ASSESSED FINE	<u>\$ 360.00</u>

blb