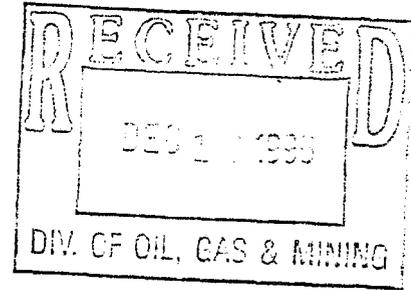


BEFORE THE BOARD OF OIL, GAS & MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH  
1594 WEST NORTH TEMPLE  
SALT LAKE CITY, UTAH 84114




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IN THE MATTER OF THE APPEAL OF	:	PETITION FOR REVIEW AND
FACT OF VIOLATION N96-35-2-1,	:	REQUEST FOR CONSOLIDATED
UNITED STATES FUEL COMPANY,	:	HEARING
HIAWATHA MINE COMPLEX	:	
	:	CAUSE NO. ACT/007/011

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United States Fuel Company ("U.S. Fuel"), by and through its counsel of record, submits this Petition for Review and Request for Consolidated Hearing to review the fact of violation of notice of violation N96-35-2-1 ("NOV") in a formal adjudicative hearing before the Board of Oil, Gas & Mining ("Board") consistent with Utah Code Ann. § 40-10-22(3) and Utah Admin. Code R645-400-360 (1996). U.S. Fuel disputes this NOV which will result in the idling of four United States Fuel Company employees. Due to the imminent harm created by the NOV and the fact that the NOV arises from similar circumstances as those relating to NOV N96-46-1-1 and N96-46-2-1, U.S. Fuel requests consolidation of these matters for hearing before the Board on January 22, 1997. U.S. Fuel seeks to vacate the fact of violation of all three pending NOVs.

**I. STATEMENT OF FACTS**

1. U.S. Fuel has contested the fact of violation of N96-46-1-1 and a hearing regarding this matter is currently scheduled before the Board on January 22, 1997. This NOV was issued to U.S. Fuel by the Utah Division of Oil, Gas and Mining ("Division") on April 19, 1996 for alleged "failure to comply with the terms of the permit"

and for failure to meet the requirements of the approved reclamation schedule as shown in the Hiawatha Mine Complex Mining and Reclamation Plan, Permit no. ACT/007/011 ("MRP").

2. U.S. Fuel has contested the fact of violation of N96-46-2-1 and this matter is currently scheduled for hearing before the Board on January 22, 1997. This NOV was issued to U.S. Fuel by the Division on August 5, 1996, alleging (1) "failure to meet the terms and conditions of the approved permit, i.e. removal of machinery within first year after cessation of operations;" and (2) "failure to properly place and store non-coal mine waste (abandoned mining machinery) in a controlled manner and in a designated portion of the permit area."

3. U.S. Fuel disputes the above stated NOVs primarily on the basis that it has not ceased mining operations and has requested the Board to vacate the fact of violation for both NOVs.

4. At an assessment conference on Friday, October 18, 1996, U.S. Fuel agreed to submit a proposal to settle violations in N96-46-1-1 and N96-46-2-1 prior to the Board hearing on December 11, 1996.

5. By way of settlement, on December 3, 1996, U.S. Fuel submitted a contemporaneous reclamation timetable, a narrative describing the status of active mining operations at the Hiawatha Mine Complex, and amended pages to the MRP.

6. Settlement negotiations were ongoing between the Division and U.S. Fuel regarding amendment of the MRP when the Division issued a third notice of violation, N96-35-2-1.

7. Notice of Violation N96-35-2-1, dated November 26, 1996, as modified, December 6, 1996, was issued to U.S. Fuel by the Division for alleged "failure to

have and implement a reclamation plan which adequately addresses all the requirements of R645-301. The NOV alleges violations of R645-301-752 (sediment control measures) and R645-301-541.400 (general requirements for a reclamation plan). The abatement schedule requires U.S. Fuel to submit a revised reclamation plan by December 30, 1996, have the plan approved by the Division by January 29, 1997, and implement the plan by February 28, 1997. A copy of the NOV, the modified NOV and related inspection reports are attached as Exhibit "A."

8. U.S. Fuels denies the fact of violation alleged by N96-35-2-1.

9. Compliance with the abatement requirements of N96-35-2-1 will result in the immediate idling of four U.S. Fuel employees who had been engaged in contemporaneous reclamation activities at the Hiawatha Mine Complex.

10. The mid-term permit review for U.S. Fuel's MRP is currently pending before the Division.

## II. ARGUMENT

### A. The NOV Must Be Vacated Because Alleged Violations are Permitting Issues Which Are Not Ripe for Enforcement Action.

NOV 96-35-2-1 alleges broad inadequacies in U.S. Fuel's currently approved reclamation plan. The NOV essentially requires U.S. Fuel to rewrite its reclamation plan for "the entire area east of the railroad tracks" at the Hiawatha Mine Complex. The Division requires that the new reclamation plan "must include all R645-301 requirements addressing reclamation at a minimum: design specifications for ponds, small area exemptions, ditches, post mining topography, soils and revegetation; maps which adequately show reclamation contours, drainages, ponds, pre-SMCRA areas and the disturbed area boundary." This NOV fails to recognize that the Division itself has approved the existing reclamation plan for U.S.

Fuel under the MRP for ACT/007/011. Although the mid-term review of the MRP is pending, this is the first notification which U.S. Fuel has received of these broad permit deficiencies. Under the Utah Coal Program, permit deficiencies are initially raised as a Division order or as part of the mid-term review of a permit. See Utah Administrative Rule R645-303-100; R645-303-200. Pursuant to R645-303-212, only after mid-term review of a permit, may the Division, by order, require a reasonable permit change. The Division order itself is subject to administrative and judicial review under R645-303-213 and R645-300-200. The Division's issuance of a violation prior to formally notifying the permittee of alleged permit deficiencies is inconsistent with Utah Coal Program.

**B. Untimely Enforcement Action Violates Due Process**

Premature issuance of the NOV also violates U.S. Fuel's rights to due process under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 7 of the Utah Constitution. Due process requires that U.S. Fuel receive fair notice before being deprived of the right to conduct operations under the approved MRP. See Provo River Water Users Ass'n. v. Morgan, 557 P.2d 927, 934 (Utah 1993) holding that the State of Utah must provide parties notice of changes in the scope of water rights in a general adjudication proceeding. Due process precludes an agency from enforcing regulatory violations and seeking penalties without first providing adequate notice of the substance of the rule or permit violation. See United States v. Trident Seafoods Corp., 60 F.3d 556, 559 (D.C. Cir. 1995); Satellite Broadcasting Co. v. FCC, 824 F.2d 1, 3 (D.C. Cir. 1987); Rawlins Environmental Services (NJ), Inc. v. EPA, 937 F.2d 649, 655 (D.C. Cir. 1991).

In this case, the Division has approved the reclamation plan under U.S. Fuel's MRP. To meet the requirements of due process, the Division must provide fair warning to the operator that its reclamation plan is no longer viewed as being in compliance with

Division regulations. Furthermore, an agency's interpretations regarding those regulations are not entitled to any deference where as here, the imposition of penal sanctions is at issue, and the agency did not provide fair warning of the conduct it wants to prohibit or require.

See Gates & Fox Co. v. Occupational Safety and Health Review Comm'n, 790 F.2d 154, 156 (DC Cir. 1986).

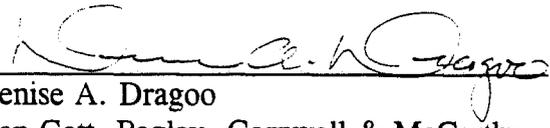
### **III. MOTION TO CONSOLIDATE**

U.S. Fuel requests that the hearing in this matter be consolidated with the pending appeal of facts of violation N96-46-1-1 and N96-46-2-1 currently set before the Board on January 22, 1997. These violations also arise from perceived inadequacies in U.S. Fuel's reclamation plan and MRP. Abatement of these NOV's will require a global approach to amendment of the MRP. Consolidating U.S. Fuel's appeal in this matter would also be a convenience for the Board and all parties concerned. Finally, the abatement action required for N96-35-2-1 will require the idling of employees and will cause other immediate harm to U.S. Fuel which should be addressed as quickly as possible.

### **IV. CONCLUSION**

In conclusion, U.S. Fuel respectfully requests an opportunity to review the fact of violation regarding these NOV's in one consolidated hearing before the Board. A proposed assessment has not been issued for NOV N96-35-2-1 and U.S. Fuel requests that the Board review the fact of violation independently from any proposed assessment for this NOV.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of December, 1996.



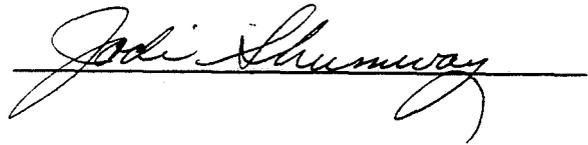
Denise A. Drago  
Van Cott, Bagley, Cornwall & McCarthy  
P.O. Box 45340  
Salt Lake City, Utah 84145-0340  
Attorneys for United States Fuel Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PETITION FOR REVIEW AND REQUEST FOR CONSOLIDATED HEARING was hand delivered this 10<sup>th</sup> day of December, 1996, to:

James W. Carter  
Director  
Utah Division of Oil, Gas & Mining  
1594 West North Temple  
Salt Lake City, Utah 84114

Vickie Bailey  
Secretary to the Board of Oil, Gas & Mining  
1594 West North Temple  
Salt Lake City, Utah 84114

A handwritten signature in cursive script, reading "Jodi Shumway", is written over a horizontal line.

**EXHIBIT A**



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

Michael O. Leavitt  
Governor  
Ted Stewart  
Executive Director  
James W. Carter  
Division Director

355 West North Temple  
3 Trac Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

November 26, 1996

Michael Watson, President  
U.S. Fuel Company  
P.O. Box 887  
Price, Utah 84501

Re: N96-35-2-1, Hiawatha Complex, U.S. Fuel Company, ACT/007/011, Folder #5,  
Carbon County, Utah

Dear Mr. Watson:

Inclosed is a copy of my most recent complete inspection and an NOV issued as a result of that inspection. I was frustrated during the inspection with the activities and lack of activities seen in the area east of the railroad tracks. I had hoped that when I got back to the office the permit would clarify the issues I encountered. The permit contained very little information on the reclamation of this area. Joe Helfrich and I decided that rather than issuing many violations that a "global" violation may be the best way to achieve compliance. I am very willing to work with you on this violation so that you can preform reclamation activities to allow future bond release.

If you have any questions please call me 538-5258.

Sincerely,

A handwritten signature in cursive script that reads "Susan M. White".

Susan M. White  
Senior Reclamation Biologist



NO. N 96-35-2-1

To the following Permittee or Operator:

Name UNITED STATES FUEL COMPANY

Mine HIAMATHA

Surface

Underground

Other

County CARBON

State UTAH

Telephone (801) 637-2252

Mailing Address P.O. BOX 887, PRICE, UTAH 84501

State Permit No. ACT/007/011

Ownership Category

State

Federal

Fee

Mixed

Date of inspection APRIL 8, 1996

Time of inspection 8:00

a.m.

p.m. to 12:00

a.m.

p.m.

Operator Name (other than Permittee) \_\_\_\_\_

Mailing Address \_\_\_\_\_

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is  is not  expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

**CERTIFIED RETURN P 074 977 699**

Date of ~~service~~/mailing 11/26/96

Time of ~~service~~/mailing XXXXX

2:00

a.m.

p.m.

MICHAEL P. WATSON

Permittee/Operator representative

PRESIDENT

Title

VALEET FROM SLC OFFICE  
Signature

SUSAN WHITE

Division of Oil, Gas & Mining representative

RECLAMATION SPECIALIST

Title

Signature

#35

Identification Number

**PERFORMANCE STANDARD CODE 02**

SEE REVERSE SIDE

WHITE-DOG M YELLOW-OPERATOR PINK-OSM GOLDENROD-NOV FILE

DOG M/NOV 1

an equal opportunity employer

Rev. 5/92

notice of violation



**NOTICE OF VIOLATION NO. N 96-35-2-1**

Violation No. 1 of 1

Nature of violation

**FAILURE TO HAVE AND IMPLEMENT A RECLAMATION PLAN WHICH ADEQUATELY ADDRESSES ALL OF THE REQUIREMENTS OF R645-301.**

Provisions of act, regulations or permit violated

**R645-301-752**

**R645-301-541, 400**

Portion of operation to which notice applies

**THE ENTIRE AREA EAST OF RAILROAD TRACKS INCLUDING BUT NOT LIMITED TO: SEDIMENT PONDS 5, 6 AND 7; DISTURBED DIVERSION DITCHES 2, 3, 4, 5, 6, 7, 8, 9, 13 AND 1; COAL FINES IMPACTED AREAS WITHIN AND OUTSIDE OF DISTURBED AREA; OLD NORTH EASTERN EMBANKMENT OF SLURRY POND #2; AREA BELOW DITCH DD6 NEAR TOPSOIL STOCKPILE; NORTHERN PORTION OF SLURRY POND NO. 5.**

Remedial action required (including any interim steps)

**SUBMIT A REVISED RECLAMTION PLAN TO INCLUDE AT MINIMUM THE ABOVE NOTED AREAS. THE RECLAMATION PLAN MUST INCLUDE ALL R645-301 REQUIREMENTS ADDRESSING RECLAMATION AND AT MINIMUM: DESIGN SPECIFICATIONS FOR PONDS, SMALL AREA EXEMPTIONS, DITCHES, POSTMINING TOPOGRAPHY, SOILS, AND REVEGETATION; MAPS WHICH ADEQUATELY SHOW RECLAMATION CONTOURS DRAINAGES, PONDS, PRE-SMACRA AREAS, AND DISTURBED AREA BOUNDARY. THE PLAN MUST BE APPROVED BY THE DIVISION. AND THE PLAN MUST BE IMPLEMENTED.**

Abatement time (including interim steps)

**SUBMIT PLANS, 30 DAYS, DECEMBER 30, 1996.**

**PLANS APPROVED BY THE DIVISION, 30 DAYS, JANUARY 29, 1997.**

**IMPLEMENT PLANS, 30 DAYS, FEBRUARY 28, 1997.**



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

**INSPECTION REPORT**

Michael O. Leavitt  
 Governor  
 Ted Stewart  
 Executive Director  
 James W. Carter  
 Division Director

355 West North Temple  
 3 Trade Center, Suite 350  
 Salt Lake City, Utah 84180-1203  
 801-538-5340  
 801-359-3940 (Fax)  
 801-538-5319 (TDD)

Partial: \_\_\_ Complete: X Exploration: \_\_\_  
 Inspection Date & Time: 11/20/96 8 AM to 1PM  
 Date of Last Inspection: 10/16/96

Mine Name: Hiawatha Complex County: Carbon Permit Number: ACT/007/011

Permittee and/or Operator's United States Fuel Company

Business Address: P.O. Box 887, Price, Utah 84501

Type of Mining Activity: Underground X Surface \_\_\_ Prep. Plant \_\_\_ Other \_\_\_

State Officials(s): Susan White and Peter Hess

Company Official(s): K.C. Jones

Federal Official(s): None

Weather Conditions: Clear and cool

Existing Acreage: Permitted-12707 Disturbed-290 Regraded-\_\_\_ Seeded-\_\_\_ Bonded-290

Increased/Decreased: Permitted-\_\_\_ Disturbed-\_\_\_ Regraded-\_\_\_ Seeded-\_\_\_ Bonded-\_\_\_

Status: Exploration/ Active/\_\_\_ Inactive/\_\_\_ Temporary Cessation/\_\_\_ Bond Forfeiture

Reclamation ( Phase I/ Phase II/\_\_\_ Final Bond Release/\_\_\_ Liability \_\_\_ Year)

**REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS**

Instructions

- Substantiate the elements on this inspection by checking the appropriate performance standard.
  - For complete inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check N/A.
  - For partial inspections check only the elements evaluated.
- Document any noncompliance situation by referencing the NOV issued at the appropriate performance standard listed below.
- Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
- Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.

	<u>EVALUATED</u>	<u>N/A</u>	<u>COMMENTS</u>	<u>NOV/ENF</u>
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. WATER MONITORING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. EXPLOSIVES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
12. BACKFILLING AND GRADING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Adh*

## INSPECTION REPORT

(Continuation sheet)

Page 2 of 4

PERMIT NUMBER: ACT/007/011

DATE OF INSPECTION: 11/20/96

(Comments are Numbered to Correspond with Topics Listed Above)

Violation N96-35-02-01 was issued this inspection for the area east of the railroad tracks.

### 1. PERMITS, CHANGE, TRANSFER, SALE

The mining and reclamation permit was issued March 25, 1992. The permit will expire March 12, 1997. The operator is aware of the expiration.

### 2. SIGNS AND MARKERS:

Many of the disturbed area markers had been recently placed by Mr. Jones. Mr. Jones stated that he will continue adequately marking the site.

### 3. TOPSOIL

Hauling of topsoil from Borrow Area A to Slurry Pond 4 had just started. The topsoil pile in Area A should be seeded with an interim seed mixture until it is respread.

### 4. HYDROLOGIC BALANCE:

a. Diversions All diversions appeared to<sup>be</sup> functioning. No design specifications could be found for the diversions which run around the base of Slurry Ponds 4 and 5. These diversions were mostly made of refuse.

b. Sediment Ponds and Impoundments Quarterly pond and catch basin inspections were done on September 9, 1996 and certified by Michael Watson P.E.#7095. Ponds 5, 6, and 7 were inspected on site. These ponds should have the shrubs removed from the emergency spill way. No design specifications could be found in the permit for these ponds which collect runoff from the now reshaped slurry ponds.

Weekly MSHA pond inspections were conducted weekly as required for Slurry Ponds 1, 4, 5 and 5A.

## INSPECTION REPORT

(Continuation sheet)

Page 3 of 4

PERMIT NUMBER: ACT/007/011

DATE OF INSPECTION: 11/20/96

c. Other Sediment Control Measures The silt fence in Borrow Area A should be extended to the south.

No sediment control measures could be found below disturbed ditch DD6, in the general area of the topsoil pile for sediment pond D005.

d. Water Monitoring UPDES monitoring points were reported as required for the 3rd quarter. Streams were monitored monthly as required, operational monitoring was performed in September as required for the third quarter.

### 7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENT

The third quarter refuse pile inspections were conducted on September 6, 1996 by Mr. Jones.

A large amount of coal fines were observed on the eastern and northern edge of the disturbed area boundary outside the disturbed area boundary.

The north eastern embankment of the old Slurry Pond No. 2 (on the north side of Refuse Pile No. 2) had not been reclaimed. Mr. Jones stated that the refuse was prelaw. However no documentation or maps could be found which designated the area as prelaw.

### 11. CONTEMPORANEOUS RECLAMATION

The surface configuration of Slurry Pond 4 and 5 does not appear to meet the design as shown in Exhibit V-13. This will be investigated on site with the Division Engineer next inspection.

Islands of unreclaimed areas remain in the area of Slurry Pond No. 4. The exact boundary of reclamation liability also needs to be determined for Pond 4. A large area which has been impacted by coal fines but vegetated exists on the eastern and northern edge of Slurry Pond No. 5. A reclamation plan must be developed for this area which is within the disturbed area boundary.

### 13. REVEGETATION

Slurry Pond No. 5 should be seeded contemporaneously with topsoiling until late February. Topsoiling should be suspended after February and if not completed resume in late August. This will reduce weed growth and soil loss by wind.

## INSPECTION REPORT

(Continuation sheet)

Page 4 of 4

PERMIT NUMBER: ACT/007/011

DATE OF INSPECTION: 11/20/96

### 21. BONDING AND INSURANCE

General liability insurance for the Hiawatha complex is issued by Acceptance Insurance Co., policy number D96CM0401. The policy is issued April 1, 1996 and will expire April 1, 1996.

Bonding is by a \$1.4 million Surety Bond with Insurance Company of North America and a 1.4 million Self Bond by parent company Mueller Industries.

Copy of this Report:

Mailed to: OSM, United States Fuel Company

Given to: Joe Helfrich (DOGM)

Inspector's Signature: Juan M. White

#35 Date: 11/20/96



**State of Utah**  
 DEPARTMENT OF NATURAL RESOURCES  
 DIVISION OF OIL, GAS

Michael O. Leavitt  
 Governor  
 Ted Stewart  
 Executive Director  
 James W. Carter  
 Division Director

355 West North Temple  
 3 Triad Center, Suite 350  
 Salt Lake City, Utah 84180-1203  
 801-538-5340  
 801-359-3940 (Fax)  
 801-538-5319 (TDD)

Post-it® Fax Note		7671	Date	12/10	# of Pages	6
To	Denise Drago		From	Susan White		
Co./Dept.			Co.			
Phone #			Phone #			
Fax #			Fax #			

December 6, 1996

Michael Watson, President  
 U.S. Fuel Company  
 P.O. Box 887  
 Price, Utah 84501

Re: Notice of Violation Number N-96-35-2-1, Site Visit, Hiawatha Complex, U.S. Fuel Company, ACT/007/011, File Folders 2 & 5, Carbon County, Utah

Dear Mr. Watson:

Enclosed please find a partial inspection of the Hiawatha Complex, dated December 3, 1996, a field visit form prepared by Robert Davidson and a modification to Notice of Violation number N-96-35-2-1. These documents are being provided to specifically address the regrading and topsoiling activities at the Hiawatha Complex.

As identified, the regrading activities did not comport with the approved regrading plan. Regrading activities may continue in accordance with the approved grading plan; however, topsoiling cannot occur until the site is properly regraded. Continuation of topsoiling prior to proper completion of grading as specified in the approved mining and reclamation plan or subsequently modified will result in enforcement action. Therefore, I encourage you to expedite the completion of the regrading activities.

Sincerely,

Joseph C. Helfrich  
 Permit Supervisor

jb  
 Enclosure: 12/3/96 inspection, field visit form, Modification to N96-35-2-1

cc: Robert Davidson, DOGM  
 Susan White, DOGM  
 Pete Hess, PFO

A007011.nov



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

## INSPECTION REPORT

Michael O. Leavitt  
Governor

Ted Stewart  
Executive Director

James W. Carter  
Division Director

355 West North Temple  
3 Trade Center, Suite 350  
Salt Lake City, Utah 84160-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

Partial: X Complete:      Exploration:       
Inspection Date & Time: 12/3/96 9AM to 1PM  
Date of Last Inspection: 11/20/96

Mine Name: Hiawatha Complex County: Carbon Permit Number: ACT/007/011

Permittee and/or Operator's United States Fuel Company

Business Address: P.O. Box 887, Price, Utah 84501

Type of Mining Activity: Underground X Surface      Prep. Plant      Other     

State Official(s): Susan White, Bob Davidson, Wayne Western

Company Official(s): K.C. Jones, Michael Watson

Federal Official(s): None

Weather Conditions: Cold and clear

Existing Acreage: Permitted-12707 Disturbed-290 Regraded-     Seeded-     Bonded-290

Increased/Decreased: Permitted-     Disturbed-     Regraded-     Seeded-     Bonded-    

Status:      Exploration/     Active/     Inactive/     Temporary Cessation/     Bond Forfeiture

Reclamation (     Phase I/     Phase II/     Final Bond Release/     Liability      Year)

### REVIEW OF PERMIT, PERFORMANCE STANDARDS & PERMIT CONDITION REQUIREMENTS

#### Instructions

- Substantiate the elements on this inspection by checking the appropriate performance standard.
  - For complete inspections provide narrative justification for any elements not fully inspected unless element is not appropriate to the site, in which case check N/A.
  - For partial inspections check only the elements evaluated.
- Document any noncompliance situation by referencing the NOV issued at the appropriate performance standard listed below.
- Reference any narratives written in conjunction with this inspection at the appropriate performance standard listed below.
- Provide a brief status report for all pending enforcement actions, permit conditions, Division Orders, and amendments.

	EVALUATED	N/A	COMMENTS	NOV/ENF
1. PERMITS, CHANGE, TRANSFER, RENEWAL, SALE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. SIGNS AND MARKERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. TOPSOIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. HYDROLOGIC BALANCE:				
a. DIVERSIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. SEDIMENT PONDS AND IMPOUNDMENTS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. OTHER SEDIMENT CONTROL MEASURES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. WATER MONITORING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. EFFLUENT LIMITATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. EXPLOSIVES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. DISPOSAL OF EXCESS SPOIL/FILLS/BENCHES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. NONCOAL WASTE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. SLIDES AND OTHER DAMAGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. CONTEMPORANEOUS RECLAMATION	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. BACKFILLING AND GRADING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. REVEGETATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. SUBSIDENCE CONTROL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. CESSATION OF OPERATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. ROADS:				
a. CONSTRUCTION/MAINTENANCE/SURFACING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. DRAINAGE CONTROLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. OTHER TRANSPORTATION FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. SUPPORT FACILITIES/UTILITY INSTALLATIONS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. AVS CHECK (4th Quarter-April, May, June) _____ (date)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. AIR QUALITY PERMIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21. BONDING & INSURANCE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## INSPECTION REPORT

(Continuation sheet)

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PERMIT NUMBER: ACT/007/011

DATE OF INSPECTION: 12/3/96

(Comments are Numbered to Correspond with Topics Listed Above)

### 2. SIGNS AND MARKERS:

Mr. Jones stated that disturbed area markers were still being put in.

### 3. TOPSOIL

The operator was told that all topsoiling activities should cease unless the approved grading plan is followed.

### 4. HYDROLOGIC BALANCE:

Silt fences must have a wire mesh backing for proper installation. Mr. Jones stated the fences will have backing. The silt fence on Borrow Area A should be extended to the berm.

### 7. COAL MINE WASTE/REFUSE PILES/IMPOUNDMENTS

Mr. Western, Division Engineer, was questioned about whether or not Pond 4 was still required to have an MSHA sign. Mr. Western called MSHA and consulted with Permit Supervisors and concluded that the Operator can decommission a pond by making a formal request to MSHA and the Division. A written finding will then be made by the Division granting the request if no opposition is received by MSHA.

Mr. Watson has stated that the old embankment to old Slurry Pond #2 is pre-law and therefore not reclaimed. Mr. Watson stated his willingness to reclaim the area in conjunction with AML. Mr. Mark Mesch, AML Program Coordinator, stated that a formal request should be made to him to start the process of designating the area as an AML site.

### 12. BACKFILLING AND GRADING

Final Surface Configuration, Exhibit V-13, and Final Surface Cross-Sections, Exhibit V-13C of the Permit were compared to the on the ground configuration of Slurry Ponds 4 and 5. The approved grading plan did not resemble the ground configuration. Violation N96-35-2-1 will be modified to require the operator to either reconfigure the Ponds to conform to approved

## INSPECTION REPORT

(Continuation sheet)

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PERMIT NUMBER: ACT/007/011

DATE OF INSPECTION: 12/3/96

the permit or submit an amendment to the Division to modify the currently approved grading plan.

### 13. REVEGETATION

Mr. Jones stated that an annual grain will be seeded on the new topsoil stock pile in Borrow area A this week or next. If the operator shuts down topsoiling operations on Slurry Pond 5 then the opened borrow area and topsoil on the Slurry Pond must also be seeded with the annual grain immediately.

Copy of this Report:

Mailed to: OSM, United States Fuel Company

Given to: Joe Helfrich (DOGM)

Inspector's Signature: Susan M. White

#35 Date: 12/5/96



UTAH  
NATURAL RESOURCES  
Oil, Gas & Mining

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

*Handwritten initials*

### MODIFICATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name United States Fuel Company

Mailing Address P.O. Box 887, Price UT 84501

State Permit No. ACT/007/011

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated* (1953):

Notice of Violation No. N 96-35-2-1 dated 11/26, 19 96

Cessation Order No. C \_\_\_\_\_ dated \_\_\_\_\_, 19 \_\_\_\_\_

Part 1 of 1 is modified as follows: Date of inspection should read November 20, 1996

Reason for modification is Typographical error

Part 1 of 1 is modified as follows: Area to which notice applies: also includes slurry pond 4, refuse pile 4, and slurry pond 5. Remedial action to also require: the operator to either reconfigure slurry ponds 4 & 5 and refuse pile 4 to meet the approved grading plan or submit a plan which details the current configuration for Division review and approval.

Reason for modification: Clarify area to which notice applies.

Part \_\_\_\_\_ of \_\_\_\_\_ is modified as follows: \_\_\_\_\_

Date of ~~service~~ mailing 12/6/96 Time of ~~service~~ mailing 3:00  a.m.  p.m.

Date of inspection 11/20/96

Mike Watson  
Permittee/Operator representative

President  
Title

Fixed and mailed from Salt Lake City Office  
Signature

Susan White  
Division of Oil, Gas & Mining

Reclamation Specialist  
Title

*Susan White*  
Signature



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

Michael O. Leavitt  
Governor

Ted Stewart  
Executive Director

James W. Carter  
Division Director

355 West North Temple  
3 Third Corner, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

DIVISION OF OIL GAS & MINING  
FIELD VISIT FORM  
TECHNICAL

Date: December 3, 1996

Time: 8:30 a.m. to 3:00 p.m.

Mine: Hiawatha Mine

File Number: ACT/007/011

DOG M Staff: Robert Davidson, Susan White and Wayne Western

Other Attendees: K. C. Jones and Mike Watson, U.S. Fuel Company

**Purpose:**

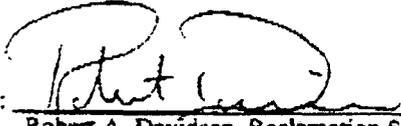
- Observe topsoiling activities in reference to the approved MRP and grading on Pond #5.
- Observe and discuss options of the stockpiled A & B horizon topsoil from Borrow Area "A".

**Observations:**

- Topsoiling of Pond #5 is in process with only the upper western edge having received soil.
- Soil borrow operations from Borrow Area "A" are proceeding according to the approved amendment. The A & B horizon topsoil has been stockpiled within the Borrow site. Subsoil is currently being excavated and hauled to Pond #5 from the eastern most section of the borrow site in the lower equipment storage yard area.
- Both Pond #4 and #5 are not graded according to the currently approved MRP. The top surfaces of both piles have concave grading which routes runoff away from the out slopes. In addition, drainage from the concave surfaces is routed to Pond #5A where runoff is collected in a sedimentation basin. Pond #5 is graded to a central depression routing runoff to a central channel that drains directly into Pond #5A. Pond #4 surface is graded towards the western edge of the pile which borders the railroad tracks. Surface runoff from Pond #4 is routed along it's western most border into a ditch that eventually drains into Pond #5A.
- Logistic and economic concerns are raised about the recently approved soil amendment to use the A and B horizon material to reclaim Borrow Area "A". Since the volume of the A and B horizon soil provides little benefit for appreciable cover on the entire surface of Pond #5, the soil amendment established that these soils were best used to reclaim the borrow area. These soil horizons were salvaged as a unit from the surface and are now stockpiled within the borrow area. However, preservation of these salvaged soils require doubling handling while accessing the subsoils beneath the stockpiles.

**Recommendations/Conclusions:**

- Cease topsoiling of Pond #5 unless the approved grading plan is followed and established. Topsoiling the Pond #5 with an unapproved graded surface places the soil resource in jeopardy.
- If topsoiling ceases, the disturbed Borrow Area "A" needs to be stabilized for protection from wind and water erosion. In addition, the stockpiled A and B horizon topsoil and the disturbed subsoil surfaces should be protected from contamination and unnecessary compaction.
- A valid option for the salvaged A and B horizon topsoil was discussed for using these soils on the out slopes of Pond #5. Because of the smaller surface area of the out slope, the resulting soil depth will be much greater than over the entire surface, thus providing a real benefit for reclamation of Pond #5 out slope. The structural integrity and fertility of these soils is much better than the subsoils and should help provide faster and better vegetation establishment. The benefit of providing large boulders and rocks on the surface out slope soils may be provided as these materials are encountered and salvaged during subsoil excavation.

Signature: 

Robert A. Davidson, Reclamation Specialist III (Soils)

on December 4, 1996