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mine file-enforce

FILED

OCT 09 1996

SECRETARY, BOARD OF
OIL, GAS & MINING

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

RECEIVED
OCT 6 1996
DIVISION OF OIL GAS & MINING PRICE UTAH

IN THE MATTER OF THE APPEAL OF	:	PETITION FOR REVIEW and
FACTS OF VIOLATION N96-46-1-1	:	REQUEST FOR HEARING
AND N96-46-2-1, UNITED STATES	:	
FUEL COMPANY, HIAWATHA MINE	:	DOCKET NO. 96-011
COMPLEX	:	CAUSE NO. ACT/007/011

United States Fuel Company ("U.S. Fuel"), by and through its counsel of record, submits this Petition for Review and Request for Hearing to review the fact of violation of Notice of Violations N96-46-1-1 and N96-46-2-1 ("NOVs") 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 R645-401-800 (1996). U.S. Fuel disputes these NOVs primarily on the basis that it has not ceased mining operations and requests the Board to vacate the fact of violation for both NOVs.

I. STATEMENT OF FACTS

1. Notice of Violation N96-46-1-1 ("NOV 1-1") was issued to U.S. Fuel by the Utah Division of Oil, Gas & 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 & Reclamation Plan, Permit No. ACT/007/011 ("MRP"). NOV 1-1 alleged violations of R645-300-143 (permit terms and conditions), R645-301-540, et seq.(reclamation plan

requirements), and R645-301-560, et seq. (performance standards). A true and correct copy of NOV 1-1 is attached as Exhibit "A."

2. The current MRP provides for implementation of a final reclamation schedule after "all mining operations have ceased." A true and correct copy of page 64 from the current MRP, dated February 12, 1993, is attached as Exhibit "B."

3. Contrary to the allegations of NOV 1-1, "mining operations" have not ceased at the Hiawatha Mine Complex as that term is defined under the Utah Coal Program.

4. U.S. Fuel denies that it violated R645-300-143, R645-301-540, et seq., or R645-301-560, et seq., or committed the violations alleged in NOV 1-1.

5. On May 20, 1996, the Division notified U.S. Fuel that NOV 1-1 was abated and terminated. A true and correct copy of the Termination of Notice of Violation, dated May 20, 1996, is attached as Exhibit "C."

6. An informal hearing to contest the fact of violation of NOV 1-1 was held before Director James W. Carter on Thursday, August 8, 1996.

7. By letter dated May 20, 1996, the Division issued U.S. Fuel a proposed assessment for NOV 1-1 of twenty penalty points and a \$200.00 fine. U.S. Fuel requested an informal conference to review this assessment with the Division on October 3, 1996. This proposed assessment is not currently pending before the Board.

8. NOV N96-46-2-1 ("NOV 2-1") 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." NOV 2-1

alleged violation of R645-301-560 (performance standards) and R645-301-528.330 (non-coal mine waste). A true and correct copy of NOV 2-1 is attached as Exhibit "D."

9. Contrary to the allegations of NOV 2-1, U.S. Fuel has not ceased mining operations as that term is defined under the Utah Coal Program and the MRP and is not required by the MRP to remove machinery from the site.

10. Contrary to the allegations of NOV 2-1, the equipment at issue was not abandoned and is not "non-coal mine waste," as that term is defined under the Utah Coal Program.

11. U.S. Fuel denies that it violated R645-301-560, R645-301-528.330 or committed the violations alleged in NOV 2-1.

12. U.S. Fuel contested the fact of violation of NOV 2-1 during an informal conference held before James W. Carter on Thursday, August 8, 1996.

13. By letter dated August 22, 1996, the Division issued a proposed assessment to U.S. Fuel for NOV 2-1 as a "hindrance violation," assessing thirty-two penalty points and a \$440.00 fine. U.S. Fuel requested an informal conference with the Division to review the assessment by letter dated October 3, 1996. This assessment is not currently pending before the Board.

14. By Order dated September 24, 1996, the Division issued Findings, Conclusions and Order upholding the fact of violation of NOV 1-1 and NOV 2-1 and modifying the abatement schedule for NOV 2-1. A true and correct copy of the Order and modification are attached as Exhibit "E."

15. U.S. Fuel denies that it committed the violations alleged in either NOV 1-1 or NOV 2-1 and denies each and every Finding of Fact and Conclusion of Law upon which the Division bases its Order dated September 24, 1996.

II. *DE NOVO* STANDARD OF REVIEW

Although the Division's Order of September 24, 1996 invites an appeal to the Board of the Division's Findings, Conclusions and Order, it is clear that this informal determination is not binding on the Board and that the Board's review of this matter is *de novo*. Utah Admin. Rule R645-400-357 specifically provides as follows:

The granting or waiver of an informal public hearing will not affect the right of any person to formal review under Utah Code Ann. § 40-10-22-(3). At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing will be introduced as evidence or to impeach a witness [emphasis added].

Therefore, the Division's Findings of Fact, Conclusions and Order are not binding on the Board. In fact, statements made or evidence produced in those informal proceedings before the Division cannot be relied upon in this matter before the Board. The Board must conduct an independent review of the fact of violation of NOV 1-1 and 2-1 and enter its own findings of fact and conclusions of law without deference to the Division's Order.

II. ARGUMENT

A. The NOVs Must Be Vacated Because U.S. Fuel Has Not Ceased Mining Operations.

Contrary to the representations set forth in the NOVs, U.S. Fuel has not ceased "all mining operations" as that term is defined under the Utah Coal Program and the MRP. U.S. Fuel is currently removing and selling coal fines from its slurry ponds at the

Hiawatha Mine Complex. Attached as Exhibit "F" is a table setting forth U.S. Fuel's slurry invoices for the first half of 1996. This table shows removal of nearly 20,000 tons of coal fines from the Hiawatha Complex and billings of \$71,954.42 for the current year. The federal Office of Surface Mining currently receives fees for coal fines removed and sold from the Hiawatha Complex at the rate of \$0.35/ton.

Furthermore, on September 30, 1994, U.S. Fuel entered into a contract to sell the Hiawatha Mine Complex to American Fuel Corp. Under the terms of this agreement, U.S. Fuel has sold the property "as is" to American Fuel Corp. and has agreed to leave portals and other mining facilities in their current condition. The buyer holds equitable title to the property and intends to conduct further underground mining operations once the agreement is consummated. American Fuel Corp. estimates that as of April 30, 1996, the Hiawatha Mine has approximately 30 million tons of minable reserves. A copy of American Fuel Corp.'s estimate of reserves at the Hiawatha Mine Complex is attached as Exhibit "G." Furthermore, the Hiawatha Mine Complex represents the best access to the Mohrland Reserves adjacent to this Mine. The Mohrland Reserves are owned by Intermountain Power Agency and are currently leased to American Fuel Corp. Therefore, underground mining activities clearly have not permanently ceased at the Hiawatha Mine Complex and the NOV's must be vacated.

B. Activities at Hiawatha are "Mining" as Defined by the Utah Coal Program; Mining Has Not Permanently Ceased.

The removal, loading and sale of coal fines from waste piles and slurry ponds at the Hiawatha Complex clearly fall within the definition of "mining" under the Utah Coal Program. For the purpose of enforcement activities, the term "mining" means "extracting coal from the earth or coal waste piles and transporting it within or from the permit area"

[emphasis added]. Utah Admin. Rule R645-100-200 (1996). The term "surface coal mining and reclamation operations" is more expansively defined under Utah Code Ann. § 40-20-4(20) to include "surface operations and surface impacts incident to underground coal mining, . . ." Removal and sale of coal fines at the Hiawatha Mine Complex are either surface operations or surface impacts incident to mining as defined above under the Utah Coal Mining and Reclamation Act. Clearly, the removal and sale of coal fines constitutes "mining" activities under the Utah Coal Program and the NOV's must be vacated.

In addition, underground mining operations at Hiawatha have not "permanently ceased" as that term is used under the Utah Coal Program. The operator has not notified the Division of its intention to permanently cease or abandon operations under R645-301-515.320, 321. Consistent with R645-301-541.100, final closure and reclamation of affected areas will occur only after coal mining and reclamation operations have permanently ceased at a mining site. R645-301-541.100 specifically provides that:

persons who cease coal mining and reclamation operations permanently will close or backfill or otherwise permanently reclaim all affected areas . . . [emphasis added].

U.S. Fuel's permanent reclamation plan under the MRP also provides that final reclamation will not occur until "all mining operations have ceased." See page 64, MRP attached as Exhibit "B."

The Division is without authority under the Utah Coal Program or the MRP to require U.S. Fuel to adhere to a final reclamation schedule until mining operations have permanently ceased. Specifically, NOV 1-1 must be vacated because: (1) U.S. Fuel has not violated the MRP; or (2) failed to meet the requirements of its approved final reclamation schedule because mining operations have not permanently ceased. In this regard, U.S. Fuel

denies that it has violated R645-300-143, 301-540 or 301-560. Under NOV 2-1, U.S. Fuel denies that it has failed to remove machinery "within the first year after cessation of operations" because permanent cessation has not yet occurred. Similarly, U.S. Fuel denies that it has violated R645-301-560 or R645-301-528.330. Therefore, to the extent that the NOVs are based upon cessation of operations at the Hiawatha Mine Complex, these NOVs must be vacated.

C. **Contemporaneous Reclamation by U.S. Fuel is Not Final Reclamation.**

U.S. Fuel has undertaken the demolition and reclamation of certain facilities at the Hiawatha Complex "as contemporaneously as practicable" with mining operations consistent with Utah Code Ann. § 40-10-17(2)(p) and R645-301-352. As set forth in U.S. Fuel's letter to the Division dated April 15, 1996, attached as Exhibit "H," U.S. Fuel has voluntarily proceeded with the contemporaneous reclamation of certain areas of the Hiawatha Complex which are no longer being utilized. U.S. Fuel has removed the preparation plant, Tipple II and the Carpenter Shop. U.S. Fuel has also reclaimed the North Fork Portal, regraded the #5 pond, and regraded and topsoiled the tipple area, #2 refuse pile and #4 pond. However, U.S. Fuel has not undertaken the permanent closure or backfilling of portals and facilities necessary to reopen the Hiawatha Complex. Indeed, U.S. Fuel is constrained by the terms of its contract with American Fuels Corp. from undertaking such activities. Furthermore, U.S. Fuel continues to conduct mining activities necessary to remove and sell coal fines. Therefore, the NOVs must be vacated because U.S. Fuel is conducting reclamation efforts "as contemporaneously as practicable" with mining operations.

D. U.S. Fuel's Mining Machinery is Not "Non-Coal" Waste.

U.S. Fuel disputes the Division's allegations set forth in NOV 2-1 and the modified NOV, that the equipment at the Hiawatha Mine Complex is "abandoned mining machinery" and hence "non-coal waste" under R645-301-528.330. U.S. Fuel objects to the characterization of this mining machinery as "abandoned." The abandonment of machinery is a matter of intent and NOV 2-1 is not supported by evidence of U.S. Fuel's intent to abandon this machinery. To the contrary, U.S. Fuel has not abandoned the Hiawatha Complex and, in fact, continues to conduct mining activities at that site. Similarly, machinery used or proposed for use at the Complex is not "abandoned." Indeed, the mining machinery cited under NOV 2-1 is the subject of the pending purchase and sale agreement with American Fuels Corp. A copy of the personal property schedule attached to the agreement is set forth as Exhibit "I." Clearly, this property is not abandoned and NOV 2-1 must be vacated.

Further, NOV 2-1 suggests that the "abandoned" mining machinery should be removed from the permit area for "final disposal" or moved to a central area for storage. Operations have not permanently ceased; therefore, the "final disposal" requested by NOV 2-1 is inappropriate.

Finally, the Division improperly cites U.S. Fuel for using areas of the operation which are already disturbed at locations where mining machinery is approved for use under the MRP. NOV 2-1 specifically cites the Middle Fork, King #4 and #5 mine yard, truck loadout area, South Fork, King #6 mine yard and the heavy equipment yard in processing plant area as being in violation. Under the MRP, mining equipment is appropriately located in these areas until final reclamation is initiated. As forth above, final

reclamation has not been undertaken in these areas. Therefore, NOV 2-1 must be vacated in its entirety.

E. **The NOVs Must be Vacated for Failure to Cite a Specific Performance Standard.**

The NOVs are so vague as to be unenforceable and should be vacated.

Generally, in specifying the nature of a violation, a notice of violation must refer to the particular performance standard violated. Section 57.10[3], note 58 *Coal Law & Regulation*, Matthew Bender (1985), comparing *Hardly Able Coal Co.*, 2 IBSMA 220 (1980) with *Eastover Mining Co.*, 2 IBSMA 70 (1980), accord *Grant R. Wright*, No. CHO-66-R (Sept. 16, 1980).

In this case, NOV 1-1 fails to cite U.S. Fuel with violation of any specific performance standard. Rather, the NOV generally alleges violation of R645-300-143 requiring compliance with permit terms and conditions, R645-301-540, et seq. (reclamation plan requirements) and R645-301-560, et seq. (performance standards). NOV 1-1 fails to identify which of the permit terms, reclamation plan requirements or performance standards was allegedly violated. Similarly, NOV 2-1 generally alleges violation of R645-301-560 (performance standards), but fails to cite a specific performance standard. Both NOVs must be vacated for lack of specificity.

CONCLUSION

In sum, U.S. Fuel respectfully requests an opportunity to review the fact of violation regarding these NOVs before the Board. The proposed assessments for these NOVs are currently under consideration by the Division. However, due to the length of time required to schedule a hearing before the Board, U.S. Fuel requests that the Board review the fact of violation independently from the proposed assessment for these NOVs. U.S. Fuel

anticipates that the assessment conference pending before the Division will be completed prior to hearing on the fact of violation before the Board. In the event that the Division upholds the assessment, the penalty will be escrowed prior to the Board hearing in accordance with R645-401-810.

RESPECTFULLY SUBMITTED this 8th day of October, 1996.


Denise A. Dragoo
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 HEARING was hand delivered this 8th day of October, 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



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

April 19, 1996

Michael P. Watson, P. E., President
United States Fuel Company
P. O. Box 887
Price, Utah 84501-2242

RE: Response to Division letter of April 5, 1996, Timeliness of
Achieved Reclamation, U. S. Fuel Company, Hiawatha Complex,
ACT/007/011, Folder #5, Carbon County, Utah

Dear Mr. Watson:

Your letter of April 15, 1996 has been received and reviewed by the Division. Unfortunately, it is felt that this response is inadequate.

Please find enclosed N96-46-1-1, for "Failure to comply with the terms and conditions of the permit." Failure to meet the requirements of the approved reclamation schedule as it is shown in the mining and reclamation plan.

Thank you.

Sincerely,

Peter Hess
Reclamation Specialist III

sd

Enclosure

cc: Jim Carter, DOGM Director
Lowell Braxton, DOGM Associate Director
Daron Haddock, DOGM Permit Supervisor
Joe Helfrich, DOGM Permit Supervisor





NO. N 96-46-1-1

notice of violation

To the following Permittee or Operator

Name United States Fuel Company

Mine Hiawatha Complex 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 19

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 MAIL Z 254 438 019 19 PH**

Date of service/mailling April 22, 1996

Time of service/mailling 17:00 Hours PH a.m. p.m.

Michael P. Watson
Permittee/Operator representative

President
Title

Mailed from DOGM Price Office
Signature

Peter Hess
Division of Oil, Gas & Mining representative

Reclamation Specialist III
Title

[Signature]
Signature

#48
Identification Number

SEE REVERSE SIDE

WHITE-DOGM YELLOW-OPERATOR PINK-OSM GOLDENROD-NOV FILE

DOGM/NOV

an equal opportunity employer

Rev. 5/92

Performance Standard Code A-3



NOTICE OF VIOLATION NO. N 96-46-1-1

Violation No. 1 of 1

Nature of violation

"Failure to comply with the terms and conditions of the permit." Failure to meet the requirements of the approved reclamation schedule as it is shown in the mining and reclamation plan.

Provisions of act, regulations or permit violated

R645-300-443

R645-301-540.ctsec

R645-301-560.ctsec

Portion of operation to which notice applies

U.S. Fuel Company's King 4/5/6 Complex

Remedial action required (including any interim steps)

The permittee must:

- 1) Determine and procure sufficient resources to expedite the reclamation as it is currently outlined in the MRP, as agreed to by the DOGM.
- 2) Initiate and promote the reclamation schedule as outlined in the MRP, or;
 - A) Revise the existing reclamation schedule to more accurately reflect U.S. Fuels intentions for reclamation of the site.
 - B) Upon approval of this revised schedule by the DOGM, initiate same and provide bi-monthly updates on the reclamation.
 - Enhance or delete any resources necessary to maintain reclamation of the site on the new revised schedule.

ABATEMENT TIME: Revision and procurement of resources - May 22, 1996 5:00 p.m.

WHITE-DOGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

EXHIBIT B

Hiawatha Area Reclamation

The Hiawatha coal processing plant and refuse disposal facilities have been in operation since 1939. They comprise 56.8 acres associated with the preparation plant the Hiawatha railroad spur and upper rail yard; 132.9 acres associated with the slurry ponds and coal refuse embankments; 1.3 acres associated with the equipment yard south of the mine office; 1.5 acres associated with the equipment yard east of slurry pond No. 5 and 51.45 acres associated with the substitute topsoil borrow areas, for a total disturbed area of 244 acres. U.S. Fuel Company intends to dismantle and remove all coal processing, loadout, and support facilities. Office buildings will be turned over to the town of Hiawatha. There has been no topsoil or fill material salvaged and stockpiled for reclamation as operations preceded the Surface Mining Control and Reclamation Act. The majority of disturbed area in Hiawatha is slurry ponds, refuse piles (from the preparation plant) and sedimentation ponds.

Preparation Plant Area

When all mining operations have ceased and the facilities in the preparation plant are no longer required, then the facilities will be dismantled. After the facilities are dismantled, all foreign debris and materials will be removed and disposed of, as previously described, in preparation for final reclamation. The preparation plant, Hiawatha railroad spur, and upper railroad yard are located in the non refuse area identified on Exhibits II-4 and II-5. Only selected portions of the preparation plant and upper storage yard areas will need to be backfilled as a part of the reclamation activity (see Preparation Plant In Situ Soils in Operation Plan). Therefore, prior to any post-mining reclamation activity which would significantly harm or destroy the topsoil resources in these areas, approximately the upper 1.5 feet of topsoil and appropriate subsoil materials will be removed from selected areas and temporarily stockpiled and protected. The soil to be temporarily stockpiled will be removed using both front end loaders and large track mounted dozers. The soil thus removed will be taken to a temporary stockpile, to be located near the North and Middle Fork road junction (as shown on Exhibit II-5) and protected from the deleterious effects of erosion by installation of straw bale dikes or temporary runoff diversions around the perimeter of the stockpile.

After the appropriate areas have been backfilled or significantly regraded, the stockpiled topsoil will be redistributed. It is anticipated that only a portion of the total area will require these measures. The area southeast of the prep. plant and the area between the railroad spur and the Middle Fork haul road can achieve the final grade without significant regrading and without temporarily stockpiling the topsoil, as only the upper few inches of topsoil have been previously disturbed, the present grade is near the proposed final grade and the soils present have sufficient chemical and physical properties to support vegetative regrowth and enhance reclamation. Laboratory tests (Table II-14) substantiate that the soil materials in the preparation plant area are adequate (both

EXHIBIT C



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

May 20, 1996

RECEIVED

MAY 22 1996

ARAVA NATURAL RESOURCES

Michael P. Watson, P. E., President
United States Fuel Company
P. O. Box 887
Price, Utah 84501

RE: Revised Schedule for Contemporaneous Reclamation, United States Fuel Company,
Hiawatha Mines, ACT/007/011-96B, Folder #3, Carbon County, Utah

Dear Mr. Watson:

The aforementioned amendment, as submitted with the third revision at 11:25 hours on this date, is approved, effective May 20, 1996. Please submit seven copies of this amendment for dispersal to various government agencies for insertion into their MRP's. Thank you.

Sincerely,

Peter Hess
Reclamation Specialist III

sd

cc: J. Helfrich, DOGM, SLC
G. Gray, American Fuels, Hiawatha





VACATION/TERMINATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name United States Fuel Company

Mailing Address P.O. Box 887

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 96-46-1-1 dated April 19, 19 96.

Cessation Order No. C _____ dated _____, 19 _____.

Part 1 of 1 is vacated terminated because the permittee has submitted a revised/updated reclamation schedule for the site. The requirements for remedial action

Part _____ of _____ is vacated terminated because have been met.

Part _____ of _____ is vacated terminated because _____

Date of service/mailling 5/20/96

Time of service/mailling 11³⁷ a.m. p.m.

Michael P. Watson
Permittee/Operator representative
Faxed/Mailed from PFO
Utah DOGM

President
Title

Peter H. Hess
Division of Oil, Gas & Mining

Reclamation Specialist III
Title

Peter H. Hess
Signature

EXHIBIT D



UTAH NATURAL RESOURCES
Oil, Gas & Mining

NOTICE OF VIOLATION NO. N 96-46-2-1

Violation No. 1 of 1

Nature of violation

1) Failure to meet the terms and conditions of the approved permit, i.e. removal of machinery within 1st year after cessation of operations

2) Failure to properly place and store noncoal mine waste (abandoned mining machinery) in a controlled manner in a designated portion of the permit area.

Provisions of act, regulations or permit violated

- 1) R 645-301-560, Performance Standards
- 2) R 645-301-528, 330, Noncoal Mine Waste

Portion of operation to which notice applies

- 1) Middle Fork, King 4 + 5 Mine Yard, Truck loadout area
- 2) South Fork, King 6 Mine Yard
- 3) Heavy Equipment Yard in Processing Plant Area

Remedial action required (including any interim steps)

- 1) Remove, place, and store all abandoned mining machinery at the 3 aforementioned sites in a controlled manner in a designated portion of the permit area, or:
- 2) remove same from the permit area for final disposal by whatever means as agreed to by the permittee and the DOGMP.

Abatement time (including interim steps)

The permittee has thirty (30) days from date of issue of N 96-46-2-1 to accomplish either remedial action.

WHITE-DOGMP YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

EXHIBIT E

SEP-28-96

THU 02:42 PM

538 5340

STATE OF UTAH OIL GAS

FAX NO. 538 5340

P.01/04

BEFORE THE DIVISION OF OIL GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---oo0oo---

IN THE MATTER OF THE APPEAL OF :
FACTS OF VIOLATION N96-46-1-1,
N96-46-2-1, UNITED STATES FUEL
COMPANY, HLAWATHA MINE
COMPLEX :

FINDINGS, CONCLUSIONS,
AND ORDER

CAUSE NO. ACT/007/011

---oo0oo---

On August 8, 1996, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to United States Fuel Company (U.S. Fuel) for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding: James W. Carter
Director

Petitioner: Michael P. Watson
Gary Barker

Division: Joe Helfrich
Peter Hess

Based upon the information contained in the Division's files, and upon information provided by the Petitioner at the informal conference, the Division enters the following Findings, Conclusions and Order:

FINDINGS OF FACT

- 1. Notice of this informal conference was properly given.

Post-it* Fax Note	7671	Date	# of pages 4
To	MIKE WATSON	From	Joe Helfrich
Co./Dept.		Co.	
Phone #		Phone #	801-538-5290
Fax #	801-477-3394	Fax #	

2. Violation N96-46-1-1 was written for "Failure to comply with the terms of the permit. Failure to meet the requirements of the approved reclamation schedule as it is shown in the mining and reclamation plan.

3. The mining and reclamation plan provides, in pertinent part; "When all mining operations have ceased, and the facilities in the preparation plant are no longer required, then the facilities will be dismantled." The plan then goes on to describe the backfilling, grading and revegetation requirements for the mined area. Tables II-23, II-24, and II-25 establish reclamation timetables for the Processing Plant and Loadout Facility, the Middle Fork Mining Operations, and South Fork Mining Operations, respectively.

4. U.S. Fuel is currently extracting and selling coal fines from its slurry ponds, and argues that it has therefore not ceased "all mining operations". The Division points out that U.S. Fuel has ceased its underground operations, has demolished much of its surface facilities and has commenced the reclamation required by its permit, but that U.S. Fuel has failed to stay within the schedules set forth in Tables II-23, II-24 and II-25. The Division argues that U.S. Fuel is two years behind the schedule set forth in its permit.

5. Violation N96-46-2-1 was written for "Failure to meet the terms and conditions of the approved permit, i.e. removal of machinery within 1st year of cessation of operations", and for "Failure to properly place and store non-coal mine waste (abandoned mining machinery) in a controlled manner in a designated portion of the permit area."

6. Although N96-46-2-1 had not been formally appealed at the time of the informal conference in this matter, information relating to the violation was introduced and argument was made at the time of the informal conference. U.S. Fuel subsequently

submitted information demonstrating that some or all of the mining equipment at issue has been sold to other parties and is therefore not "non-coal" waste. U.S. Fuel argues that it therefore lacks control over the machinery in question, and can neither dispose of it nor remove it from the mine permit area.

CONCLUSIONS OF LAW

1. U.S. Fuel's cessation of underground mining activities and demolition of much of its surface facilities constituted a cessation of mining activities which triggered its obligation to commence reclamation in accordance with its reclamation plan. Continued removal and sale of coal fines from its sediment and slurry ponds is a part of U.S. Fuel's reclamation of the site, and does not forestall its obligation to timely reclaim the site.

2. The sale by U.S. Fuel of the machinery which gave rise to N96-46-2-1 puts dismantling or disposal of that machinery out of U.S. Fuel's control. U.S. Fuel remains responsible, however, for ensuring that all activities, mining or other, are conducted in the permit area in accordance with the approved mining and reclamation plan

ORDER

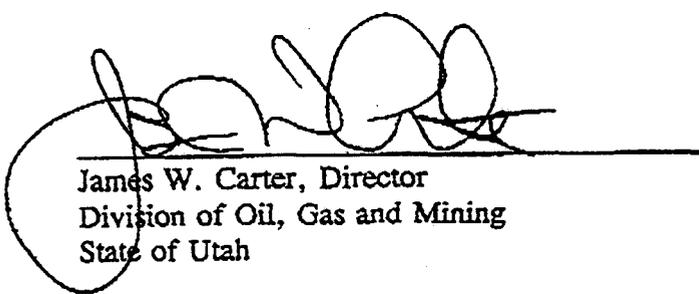
NOW THEREFORE, it is ordered that:

1. NOV N96-46-1-1 is upheld.
2. The abatement of NOV N96-46-2-1 be modified to require that, within 30 days of this order, U.S. Fuel identify, in the field or on a permit area map, that equipment which has been sold and that which remains the property of U.S. Fuel, and that within 60 days of this order, U.S. Fuel remove and properly dispose of its non-coal waste and abandoned machinery in accordance with its mining and reclamation plan. Further, within 60 days of

the date of this order, U.S. Fuel must relocate the machinery which has been sold to a location approved in the mining and reclamation plan for equipment storage.

3. The Petitioner may appeal these determinations of fact of violation to the Board of Oil, Gas and Mining by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements, including placing the assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 24th day of September, 1996.



James W. Carter, Director
Division of Oil, Gas and Mining
State of Utah

DIV OIL GAS & MINING 1 801 637 8603 FAX:1-801-637-8603

Sep 27 12:05 P.01/01



UTAH NATURAL RESOURCES Oil, Gas & Mining

3 Third Center - Suite 350 - Salt Lake City, UT 84180-1203 - 801-536-5340

Post-It™ brand fax transmittal memo 7671 # of pages > 1	
To: <u>Mike Watson</u>	From: <u>Peter Hess</u>
Co: <u>Arava</u>	Co: <u>PIO - DOGM</u>
Dept: <u>U.S. Fuel Co.</u>	Phone: <u>637-5806</u>
Fax: <u>472-3384</u>	Fax: <u>637-8603</u>

original will go in the mail.

MODIFIC. NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name United States Fuel Company - Hiawatha Complex

Mailing Address P.O. Box 887, Price, Utah 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 96-46-2-1 dated August 5, 1996

Cessation Order No. C _____ dated _____, 19____

Part 1 of 1 is modified as follows: As required by Division order dated 9/24/96, regarding the aforementioned violation, the abatement/remedial action is modified as follows:

1) ~~U. S. Fuel has 30 days from 9/24/96 (10/24/96) to identify and mark~~ U. S. Fuel has 30 days from 9/24/96 (10/24/96) to identify and mark ~~equipment in the field or on a permit area map that equipment which has been sold and that which remains the property of U. S Fuel Co.~~

2a) ~~U.S. Fuel has 60 days from 9/24/96 (11/23/96) to remove and properly dispose of its noncoal waste and abandoned machinery.~~

2b) U.S. Fuel has 60 days from 9/24/96 (11/23/96) to relocate the machinery which has been sold to an approved location for equipment storage in the mining and reclamation plan.

Reason for modification is the Division Order.

~~Modified as follows~~

Date of service/ mailing 9/27/96

Time of service/ mailing 12:00 a.m. p.m.

Date of inspection 8/5/96

Mike Watson, P.E.
Permittee/Operator representative

President
Title

Mailed & Faxed from DOGM Price Office
Signature

Peter Hess
Division of Oil, Gas & Mining

Reclamation Specialist III
Title

Signature

WHITE-DOGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLD/PINK-NOV RLE
DOGM/MVC-1

an equal opportunity employer

EXHIBIT F

**UNITED STATES FUEL CO.
SLURRY INVOICES
1996**

DATE	INV #	CUSTOMER	TONS	PURCHASED	RATE	TOTAL	PAID
2/19/96	21996	STARPOINT FUELS INC.		LABOR TO LOAD TRAIN		\$4,750.00	4,367.83
3/12/96	1	STARPOINT FUELS INC.	5,000.00	SLURRY-POND FINES	3.50	\$17,500.00	0.00
4/1/96	411996	STARPOINT FUELS INC.	(109.19)	SLURRY-POND FINES	3.5	(\$382.17)	0.00
4/25/96	3	STANDARD INDUSTRIES	3,159.44	SLURRY-POND FINES	3.50	\$11,058.04	11,058.04
5/1/96	4	INDUSTRIAL MATERIALS CO.	3,800.00	SLURRY-POND FINES	4.50	\$17,100.00	17,100.00
5/14/96	6	STARPOINT FUELS INC.	(5,000.00)	SLURRY-POND FINES	3.50	(\$17,500.00)	0.00
5/23/96	8	STANDARD INDUSTRIES	13,142.85	SLURRY-POND FINES	3.00	\$39,428.55	39,428.55
						\$0.00	
						\$0.00	
						\$0.00	
						\$0.00	
						\$0.00	
1ST QTR			5,000.00				
2ND QTR			14,993.10				
3RD QTR			0.00				
4TH QTR			0.00				
YTD:			19,993.10				
YTD BILLED:			19,993.10			\$71,954.43	\$71,954.42

EXHIBIT G

AMERICAN FUEL CORP.					
MINEABLE COAL RESERVES					
					RAW
					RECOVERABLE
SEAM/AREA		COAL	IN-PLACE		
		ACRES	TONS	TONS	
"B" SEAM - REMNANT BLOCKS					
FEE:	KING 4	27.2	272,000	163,200	
	KING 5	146.4	1,339,000	803,400	
LEASE SL - 025431:					
	KING 5	22.85	209,000	125,400	
	KING 5 WEST	85.6	1,044,000	626,400	
	UNASSIGNED	41.6	546,000	327,600	
LEASE SL - 069985:					
	UNASSIGNED	37.8	526,000	315,600	
U.S.G.S. AUTHORIZATION:					
	UNASSIGNED	18.5	274,000	164,400	
"B" SEAM - PILLAR AREAS					
FEE:	KING 4	244.4	1,228,000	736,800	
	KING 5	204.9	936,000	561,600	
LEASE SL - 025431:					
	KING 5	35.9	164,000	98,400	
TOTAL "B" SEAM		865.15	6,538,000	3,922,800	
"A" SEAM					
FEE:	KING 4 (A)	174.0	2,702,000	1,621,200	
	KING 4 (A&H)	337.2	4,577,000	2,746,200	
	UNASSIGNED	400.3	4,499,000	2,699,400	
LEASE SL - 025431:					
	UNASSIGNED	50.1	449,000	269,400	
LEASE U - 51923:					
	KING 4 (A)	19.0	223,000	133,800	
	KING 4 (A&H)	36.5	600,000	360,000	
TOTAL "A" SEAM		1017.1	13,050,000	7,830,000	
HIAWATHA SEAM - REMNANT BLOCKS - KING 6					
	LEASE SL - 025431:	21.4	390,000	234,000	
	LEASE SL - 069985:	14.7	290,000	174,000	
	U.S.G.S. AUTHORIZATION:	14.0	292,000	175,200	
HIAWATHA SEAM - PILLAR AREAS - KING 6					
FEE:		23.3	198,000	118,800	
	LEASE SL - 025431:	142.7	1,256,000	753,600	
HIAWATHA SEAM - WEST BLOCK - KING 6					
FEE:		260.6	3,364,000	2,018,400	
	LEASE SL - 025431:	173.7	2,687,000	1,612,200	
	LEASE SL - 069985:	121.9	1,555,000	933,000	
	U.S.G.S. AUTHORIZATION:	36.3	437,000	262,200	
TOTAL HIAWATHA SEAM		808.6	10,469,000	6,281,400	
GRAND TOTAL		2,690.85	30,057,000	18,034,200	
BASED ON GEOLOGIST REPORT OF SEPTEMBER 17, 1994					
ADDITIONS AND CORRECTIONS HAVE BEEN MADE; RAW RECOVERABLE					
BASED ON 60% RECOVERY					
RESERVE POSITION AS OF APRIL 30, 1996					

EXHIBIT H

UNITED STATES FUEL COMPANY



P.O. Box 887
PRICE, UTAH 84501

(801) 472-3372
FAX (801) 472-3384

April 15, 1996

Mr. Pete Hess
Reclamation Specialist
Division of Oil, Gas & Mining
Utah Department of Natural Resources
451 East 400 North
Price, UT 84501

Re: Reclamation at Hiawatha

Dear Pete,

I am both disappointed and surprised regarding your letter of April 5, 1996 in which you indicate the Division is not satisfied with the rate of reclamation at United States Fuel Company's ("USF") Hiawatha property. In contrast to other mines in the area which have layed dormant for years and no reclamation has been undertaken, USF has been very proactive. I believe that USF has far exceeded any regulatory requirement in its ongoing reclamation efforts. Contemporaneously with USF's continued (albeit reduced) operations, we have expended considerable resources on reclamation. You have undoubtedly observed the results of the reclamation work including the following partial list:

- Removal of the Preparation Plant
- Removal of Tipple II
- Regrading of the tipple area
- Removal of the Carpenter Shop
- Reclamation of the North Fork Portal
- Regrading and topsoiling of the #4 pond
- Regrading and topsoiling of the #2 refuse pile
- Regrading of the #5 pond

At the point in time when operations cease at the Hiawatha property, all the aforementioned tasks will be behind us. USF is not behind schedule on this reclamation work but rather way ahead. We are proud of our reclamation accomplishment's and would welcome a visit from Daron or any other Division representative to personally tour our property. I do not understand the Division's position on this matter and await further correspondence.

Sincerely,

Michael P. Watson
President

cc: Jim Carter, Director, DOGM
Lowell Braxton, Associate Director, DOGM

EXHIBIT I

Exh. "A" - cont'd.
Page 8 of 17 Pages

PART IV

OTHER PROPERTY

A. Personal Property Interests for and in connection with coal mining operations at US Fuel's King Mines, including the following:

EQUIPMENT

<u>Manufacturer</u>	<u>Model</u>	<u>S/N</u>	<u>Location</u>
	Steam Cleaner		K4
	Portable Welder		K4
Joy	Cutterhead Gear Case		K4
Timberline	Water tank (mobile)		K4
Timberline	Material Trailer (UG)		K4
Timberline	Material Trailer (UG)		K4
Timberline	Material Trailer (UG)		K4
U.S. Fuel	Spreader		K4
	Fan Duster/Fan		K4
	Fan Duster/Fan		K4
U.S. Fuel	Shop Car		K4
U.S. Fuel	Shop Car		K4
U.S. Fuel	Shop Car		K4
	Kobe Pump Assy. (20hp)		K4
	Fairbank Morse (100hp)		K4
Al Lee	Duster 480V		K4
U.S. Fuel	Lube Station (mobile)		K4
	Bathroom Pump		K4
	Bathroom Pump		K4
S/R	488 Scoop Charger		K4
S/R	488 Scoop Charger		K4
	Main Water Pump 480V		K4
	Duster 480V		K6
	Duster (hyd)		

Exh. "A" - cont'd.
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EQUIPMENT - ELECTRICAL

<u>Manufacturer</u>	<u>Model</u>	<u>S/N</u>	<u>Location</u>
Silpak	Sectionalizing Switch		SY
U.S. Fuel	Sectionalizing Switch		SY
Ohio Brass	Sectionalizing Switch		SY
U.S. Fuel	Sectionalizing Switch		SY
U.S. Fuel	Sectionalizing Switch		SY
Federal Pacific	Power Center (1000)		SY
Pemco	Power Center (750)		SY
Pemco	Power Center (750)		SY
U.S. Fuel	Power Center (750)		SY
U.S. Fuel	Power Center (750)		SY
Ohio Brass	Power Center (1500)		SY
Pemco	Power Center (750)		SY
Elmac	PC/BS (500)		SY
Pemco	PC/BS (500)		SY
Pemco	PC/BS (500)		SY
MCI	PC/BS (500)		SY
MCI	PC/BS (500)		SY
Ensign	Power Center (1000)		K4
Pemco	Power Center (750)		K4
Pemco	Dist. Box		K6
Pemco	Dist. Box		K4
Pemco	Dist. Box		K4
Pemco	Dist. Box		K4

MINING EQUIPMENT

<u>Manufacturer</u>	<u>Model</u>	<u>S/N</u>	<u>Location</u>
Joy	12CM10 Miner		K4
Joy	12CM6 Miner		K6
Stamler	17 Feeder		K4
Long Air Dox	Rhino Feeder		K6
Lee Norse	TD43-2 RB		K6
Lee Norse	TD43-1 RB		K6
Lee Norse	TD43-2 RB		K6

Exh. "A" - cont'd.
Page 10 of 17 Pages

Ingersol Rand	IR250 Compressor		K6
Lee Norse	TD43-2 RB		K4
Lee Norse	TD43-2 RB	21508	K4
Lee Norse	TD43-2 RB	21232	K4
FMC	Roof Bolter		K4
Joy	RBD 81 Face Drill		K4
Lee Norse	265 Miner		K4
Lee Norse	TD43-1		K4
Simmons Rand	488 Scoop	1946	K4
Simmons Rand	488 Scoop	1945	K4
Cate	Compressor - Mobile		K4
Sullair	Compressor 480V	45826	K6
Sullair	Compressor 480V		K6
U.S. Fuel	Shop Car		K6
Sullair	Compressor 480V		K4
Atlas-Copco	Compressor 480V (skid)		K4

DIESEL EQUIPMENT

<u>Manufacturer</u>	<u>Model</u>	<u>S/N</u>	<u>Location</u>
EIMCO	936 Scoop	936M	SY
EIMCO	935 Scoop	935-0060	SY
Wagnor	ST2B Scoop		SY
Cate	Generator Set		K4
PH	18 Ton Cherry Picker		SS
LiftAll	Fork Lift	78375	K4
Fiat Allis	60S Loader		K4
Cate	Mobile Compressor		K4
Blade Mor	707 Grader		K4
Cat	988B Loader		SS
Michigan	210 Scrapper		SS
Euclid	R50 Dump Truck	50W-3450	SS
Euclid	R50 Dump Truck		SS
Euclid	201 TD Dump Truck	62-E1-197	SS
Ford	8000 Water Truck		SS
Ford	8000 Snow Plow		SS
Ford	8000 Snow Plow		SS
Cat	14E Grader		SS

Exh. "A" - cont'd.
Page 11 of 17 Pages

Ford	F250 Pickup	SS
Ford	F150 Pickup	SS
Ford	F150 Pickup	SS
GMC	S-15 Pickup	SS
Cat	D8 Cat	SS
Cat	D8 Cat	SS
Ford	Winch Truck	SS

BELT EQUIPMENT

<u>Manufacturer</u>	<u>Model</u>	<u>S/N</u>	<u>Location</u>
Long Airdox	2-150 HP Drive		K6
Long Airdox	2-150 HP Drive		K6
Long Airdox	Take Up Easy		K6
U.S. Fuel	Tail Piece 42"		K4
U.S. Fuel	Transfer/Tail Piece		K4
Long Airdox	2-150 Drive 42"		K4
Long Airdox	2-150 Drive 42"		K4
Continental	125 Drive 42"		K4
Continental	125 Drive 42"		K4

TRANSFORMERS - MOTORS

<u>Motor</u>	<u>KVA</u>	<u>Phase</u>	<u>Voltage</u>
X-Former	600 HP	3PH	
X-Former	197 KVA	1PH	
X-Former	197 KVA	1PH	
X-Former	197 KVA	1PH	
X-Former	3750 KVA	3PH	
X-Former	75 KVA	1PH	
X-Former	75 KVA	1PH	
X-Former	75 KVA	1PH	
X-Former	5000 KVA	3PH	
X-Former	2500 KVA	3PH	
X-Former	150 KVA	1PH	
X-Former	333 KVA	1PH	

Exh. "A" - cont'd.
Page 12 of 17 Pages

X-Former	333 KVA	1PH
X-Former	167 KVA	1PH
Motor	100 HP	3PH
Cutter Motor	150 HP	3PH

BUILDINGS & STRUCTURES

<u>Property</u>	<u>Location</u>
Bathhouse	K6
Shop	K6
Substation - 12 KV/4160	K6
Switch Gear - Westinghouse	K6
Power Line - 4/O Copper	K6
Tan Assembly (spare motor)	K6
Truck Loadout Structure	K6
Bathhouse	K4
Fan Assembly & Structure - 1160 600 HP	K4
Shop	K5
Fan Assembly & Structure - 480V	K5
Truck Load-Out Structure	K4
Rock Dust Storage Bin	K5
Shop	K4
Switch Gear	K5
Switch Gear	K4
Substation	
Surface Diesel Shop	
Surface Substation - 44KV/12KV 480	
Surface Shop	
Surface Bathhouse	

Exh. "A" - cont'd.
Page 13 of 17 Pages

Surface Warehouse
Gas Tank & Pump
Diesel Fuel Tank & Pump

MISCELLANEOUS EQUIPMENT
(situated at Middle Fork Mine Offices)

<u>Property</u>	<u>Location</u>
File Cabinets	K4 & K6
Desks	K4 & K6
Bookcases	K4 & K6
Chairs	K4 & K6
Credenzas	K4 & K6
Map Cabinets	Engineering
Safes	All

Supplies Including:

Timber in miscellaneous lengths
Tools
High Voltage Cable (8KV & 15 KV) total 5,000 ft.