



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

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November 10, 1997

CERTIFIED RETURN RECEIPT  
P 074 977 277

Steve Traweek, Resident Agent  
EarthCo  
1179 East Main Street, #214  
Price, Utah 84501

Re: Reassessment of Proposed Assessment for State Violation No. N-97-41-5-1, Nevada Electric Investment Company, Wellington Preparation Plant, ACT/007/012, Folder #5, Carbon County, Utah

Dear Mr. Traweek:

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

Upon further discussion with inspector, Paul Baker, I have reassessed the violation and lowered the damage points from 10 to 5, due to the fact that the 25 yards is a minor amount of soil.

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued by Paul Baker, Reclamation Biologist on October 24, 1997. Rule R645-401-600 et. seq. 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.

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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 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,



Pamela Grubaugh-Littig  
Assessment Officer

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Enclosure

cc: James Fulton, OSM  
Patrick Collins, Mt. Nebo Scientific  
Vicki Bailey, DOGM

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WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE NEICO/Wellington Preparation Plant NOV# N-97-41-5-1

PERMIT ACT/007/012 VIOLATION 1 OF 1

ASSESSMENT DATE 11/10/97 ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY MAX 25 POINTS

- A. Are there previous violations, which are not pending or vacated, which fall within 1 year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>C-97-41-2-1</u>	<u>01/10/97</u>	<u>5</u>
<u>N-97-41-2-1</u>	<u>05/20/97</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** 6

II. SERIOUSNESS (EITHER A OR B)

NOTE: For assignment of points in Parts II and III, the following apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category the violation falls.
- Beginning at the mid-point of the category, the Assessment Officer will adjust the point up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? A

A. EVENT VIOLATION MAX 45 POINTS

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

Loss of reclamation/revegetation potential.

2. What is the probability of the occurrence of the event which a violated

standard was designed to prevent?

Occurred

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

Soil material that was designated in the approved plan was covered by the pad and/or graded to the side and covered by other fill material.

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 5  
(Reassessed from 10 to 5)**

**PROVIDE AN EXPLANATION OF POINTS:**

The amount of material that was covered is minor compared to the total amount needed to reclaim the entire site. The damage points were reassessed. The inspector stated that the amount of material was minor.

**B. HINDRANCE VIOLATION MAX 25 POINTS**

1. Is this a potential or actual hindrance to enforcement?     
RANGE 0-25

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

**ASSIGN HINDRANCE POINTS 0**

**PROVIDE AN EXPLANATION OF POINTS:**

**TOTAL SERIOUSNESS POINTS (A OR B) 25**

III. NEGLIGENCE MAX 30 POINTS

- 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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence  
ASSIGN NEGLIGENCE POINTS 15

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee is aware of the requirement to salvage topsoil.

IV. GOOD FAITH MAX 20 POINTS

(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 withing 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 the 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?

IN 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 of the plan submitted for abatement was incomplete)

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

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee must provide 25 cy of adequate soil material to replace material to replace material that was covered by the pad. This has not been done to date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION	<u>N-97-41-5-1</u>
I. TOTAL HISTORY POINTS:	<u>6</u>
II. TOTAL SERIOUSNESS POINTS:	<u>25</u>
III. TOTAL NEGLIGENCE POINTS:	<u>15</u>
IV. TOTAL GOOD FAITH POINTS:	<u>0</u>
TOTAL ASSESSED POINTS:	<u>46</u>
<b>TOTAL ASSESSED FINE:</b>	<b><u>\$840.00</u></b>

