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United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
BROOKS TOWERS
1020 15TH STREET
DENVER, COLORADO 80202

TAKE PRIDE IN AMERICA

RECEIVED
DEC 27 1989
Ans'd.....

December 18, 1989

In Reply Refer To:
4420
INE

Kaiser Steel Corporation
P. O. Box 1107
Raton, NM 87740

RE: CIVIL PENALTIES FOR VIOLATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, (SMCRA), 30 U.S.C. 1201 et seq.

Enclosed is a notice of proposed civil penalty assessment with respect to certain violations for which a notice of violation (NOV) or a cessation order (CO) was issued to you.

Please read this letter very carefully. It contains information concerning requirements for payment of civil penalty assessments which must be followed to avoid additional cost, and requirements for obtaining informal and formal review of the penalty. If you have any questions, you may call the Inspection and Enforcement Section at (303) 844-3516.

I. PAYMENT PROCEDURES

Unless you request an assessment conference or administrative hearing in accordance with the instructions set forth below, the proposed civil penalty assessment will become a Final Order within 30 days of receipt of this letter. Payment must be received by the Office of Surface Mining (OSM), Branch of Collections, within 30 days after the assessment becomes a Final Order or the debt will be considered delinquent and the following sequence of charges will be applied to your account:

A. Interest calculated at the current Treasury rate will be assessed from the day when payment of the civil penalty was first due.

B. Administrative costs incurred in the processing and handling of the delinquent debt, such as the cost of referring the account to a debt collection company.

C. If any portion of the civil penalty remains unpaid 90 days after the assessment is first due, you will be subject to a 6 percent penalty year upon the balance due calculated from the first day of delinquency. This penalty will accrue at the rate of one-half of one percent for each month or portion thereof that the balance remains unpaid.

Payment should be made by check or money order, payable to the Office of Surface Mining and mailed to:

U. S. Department of Interior
Office of Surface Mining
Reclamation and Enforcement
P.O. Box 360292 M
Pittsburgh, PA 15251

To assure proper credit for your payment, please note on your check or money order the citation number for which payment is being made. If payment of the civil penalty in a lump sum will result in severe financial hardship, please contact the Branch of Collections immediately at 202/343-4031 to discuss installment terms.

II. INSTRUCTIONS TO REQUEST AN ASSESSMENT CONFERENCE OR FORMAL ADMINISTRATIVE HEARING

A. REQUEST FOR ASSESSMENT CONFERENCE

If you wish a conference with a representative of OSM to review the amount of this proposed assessment, you must submit a written request within 30 days after you receive this letter as provided at 30 CFR 845.18. You may use the enclosed form to request a conference. Send your request to:

U. S. Department of the Interior
Office of Surface Mining
Inspection and Enforcement Section
1020 15th Street
Denver, CO 80202

B. REQUEST FOR FORMAL HEARING

If you wish a formal hearing before an Administrative Law Judge under Section 518 of SMCRA to contest the proposed penalty assessment or the fact of the violation, you must file a Petition for Review together with payment for the full amount of the civil penalty assessed. Your payment will be deposited in an escrow account until there is a final decision on the amount, if any, that is due. Your escrow payment may be made by check or money order made out to the "Office of Surface Mining." IN ORDER TO ASSURE PROPER CREDIT FOR YOUR PAYMENT, PLEASE WRITE ON THE FRONT OF THE CHECK OR DRAFT THE NUMBER OF THE NOV OR CO AND THE PERTINENT VIOLATION(S). ATTACH THE DRAFT OR CHECK TO THE PETITION AND SEND TO:

Office of Hearings and Appeals
U. S. Department of the Interior
4015 Wilson Boulevard
Arlington, Virginia 22203

The dates for filing the Petition for Review are:

1. If you are not requesting an assessment conference, you have 30 days from receipt of this letter to file the Petition for Review.

2. If an assessment conference has been held, you have 15 days from receipt of the notice of conclusion of the conference to file the Petition for Review.

The requirements for the contents of the Petition for Review are set forth at 43 CFR 4.1152. If it is determined through administrative review of the proposed penalty that no violation occurred, or that the amount of the penalty should be reduced, OSM will refund the amount with appropriate interest. However, all refunds are subject to administrative offset for any other outstanding civil penalty debts and/or delinquent reclamation fees you may owe. Please be advised that failure to forward the amount of the proposed assessment along the Petition for Review under Section 518 of SMCRA will result in a dismissal of your Petition. Since you are requesting a formal hearing, you may want to have an attorney assist you in the presentation of your case. However, you are entitled to represent yourself.

C. <u>REQUEST FOR FORMAL HEARING TO CONTEST SOME BUT NOT ALL VIOLATIONS</u>

If you wish a hearing to contest some, but not all, of the assessed penalties under Section 518, you must indicate the specific violations(s) for which you want a hearing. And, as stated in Section II.B above, you must pay into escrow the proposed penalty for those violations. However, with respect to the uncontested penalties, you must pay for them within 30 days of the assessment becoming a Final Order to avoid liability for the additional charges described in Section I.

Sincerely,

Floyd L Johnson

Floyd Johnson, Chief
Inspection and Enforcement Section

Enclosures

Sent Certified Mail Return Receipt Requested

United States Department of the Interior

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RECLAMATION AND ENFORCEMENT
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Kaiser Steel Corporation
P. O. Box 1107
Raton, NM 87704

Certified Mail

RE: NOV # N89-2-370-6 Violation(s) 1 and 2 of 2

Dear Sirs:

Under the point system we use to set penalties (30 CFR 845), we are not required to assess a penalty for a violation contained in a notice of violation if the violation is assigned 30 points or less. In deciding whether to impose a penalty, we consider the permittee's history of violations, the seriousness of the violation, whether it was negligent or willful, and how rapidly the permittee complied. Using these criteria, we have decided not to impose a civil penalty for the violation(s) listed above. Penalties are being assessed for all other violation(s), if any, covered by the same notice of violation.

The violation(s) listed above will remain on your record unless vacated as a result of administrative or judicial review. If you should receive another Notice of Violation or Cessation Order, all violation(s) on your record will be taken into account in determining whether a penalty should be assessed and the amount of the penalty.

Sincerely,

Floyd L. Johnson

Floyd Johnson, Chief
Inspection & Enforcement Section

Attachment

INSPECTION AND ENFORCEMENT SECTION
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
U.S. DEPARTMENT OF THE INTERIOR
1020 15th STREET
DENVER, COLORADO 80202

NOTICE OF PROPOSED ASSESSMENT

Notice of Violation # N89-2-370-6

Inspection and Enforcement Section has reviewed the notice of violation indicated above, information furnished by the authorized representative of the Secretary, and any information submitted by the permittee or operator pursuant to 30 CFR 845.17. Based on this review, the Inspection and Enforcement Section has determined that the violations cited appear to have occurred and proposes the following penalties:

NOV received: Sent Certified Mail

Violation No.	Amount of Proposed Assessment
1 of 2	No Penalty Assessed
2 of 2	No Penalty Assessed
____ of ____	_____
____ of ____	_____
____ of ____	_____
____ of ____	_____

TOTAL PROPOSED ASSESSMENT No Penalty Assessed

Note:

If the attached assessment worksheet shows that good faith was not considered in making this assessment (due to the length of the abatement period), you may request a modification based on consideration of good faith. To obtain a reduction of the penalty on the basis of good faith in attempting to achieve compliance, you must show that you took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before that date set for abatement. Your request for a modification should be made in writing, after the violation has been abated, and should be addressed to the Inspection and Enforcement Section at the above address.

ASSESSOR #: 61

ASSESSMENT WORKSHEET

NOV # N89-2-370-6
CO #
PERMIT # INA 007/013

Company Name / Permittee: Kaiser Steel Corporation

VIOLATION 1 of 2

		POINTS
1. History of Previous Violations:		0
2. Seriousness (Part A or B)		
A. (1) Probability of Occurrence:	6	
(2) Extent of Actual or Potential Damage:	6	
B. Obstruction to Enforcement:	--	
TOTAL Seriousness:		12
3. Negligence:		12
4. Good Faith:		--
TOTAL POINTS:		24
ASSESSMENT:		N.P.A.

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VIOLATION 2 of 2

		POINTS
1. History of Previous Violations:		0
2. Seriousness (Part A or B)		
A. (1) Probability of Occurrence:	6	
(2) Extent of Actual or Potential Damage:	11	
B. Obstruction to Enforcement:	--	
TOTAL Seriousness:		17
3. Negligence:		12
4. Good Faith:		
TOTAL POINTS:		29
ASSESSMENT:		N.P.A.

Assessor #: 61

ASSESSMENT EXPLANATION

NOV # N89-2-370-6
CO #

Company Name / Permittee: Kaiser Steel Corporation

Violation # 1 of 2

Points

History of Previous Violations: 0

Seriousness: (Part A or B)

A.

(1) **Probability of Occurrence:** 6

Water pollution and stream sedimentation, as the result of the permittee's failure to provide a discharge structure for a sedimentation pond, has an unlikely probability of occurrence.

(2) **Extent of Actual or Potential Damage:** 6

A single sedimentation pond has been roughly constructed without an apparent discharge structure. No indications of past overtopping or discharge were observed during the inspection. In the event that the structure wound discharge, damage would remain within the permit area. The nearest receiving stream was estimated by the inspector to be approximately one half mile away.

B. **Obstruction to Enforcement:** --

Negligence: 12

Normal Negligence

Good Faith: WILL BE CONSIDERED AFTER COMPLETE INFORMATION IS RECEIVED --

Assessor #: 61

ASSESSMENT EXPLANATION

NOV # N89-2-370-6
CO #

Company Name / Permittee: Kaiser Steel Corporation

Violation # 2 of 2

Points

History of Previous Violations: 0

Seriousness: (Part A or B)

A.

(1) **Probability of Occurrence:** 6

Water pollution and stream sedimentation, as a result of the permittee's failure to properly construct sedimentation ponds, has an unlikely probability of occurrence.

(2) **Extent of Actual or Potential Damage:** 11

Five sedimentation ponds have been constructed with undersized embankment widths and spillways. No indications of past discharge problems were observed during the inspection. In the event that the structures wound discharge or fail as a result of their under design and construction, damage would extend beyond the permit area. The nearest receiving stream was estimated by the inspector to be approximately 100 yards away.

B. **Obstruction to Enforcement:** --

Negligence: 12

Normal Negligence

Good Faith: WILL BE CONSIDERED AFTER COMPLETE INFORMATION IS RECEIVE --

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(Date)

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Office of Surface Mining
Inspection and Enforcement Section
1020 15th Street
Denver, CO 80202

ATTENTION: Floyd Johnson,
Chief, Inspection & Enforcement

Pursuant to 30 CFR 845.18, I request a conference to review the proposed assessment for violations of Notice of Violation(s) #_____ and/or Cessation Order(s) #_____.

My telephone number is ( ) _____.

_____
(Signature)

_____
(Name and Title)

_____
(Name of Permittee or Operator)

_____
(Address of Permittee or Operator)

Provided your request is **received** within 30 days as provided in 30 CFR 845.18, you will be contacted by a conference officer in order to arrange the time and place of the conference.

Pursuant to 30 CFR 845.18(b)(2), at least 5 days prior to the conference, notice of the time and place of the conference must be posted at the OSM field office that has jurisdiction over the mine. Any person has the right to participate in the conference.

COPY FOR YOUR RECORDS

_____
(Date)

U. S. Department of the Interior
Office of Surface Mining
Inspection and Enforcement Section
1020 15th Street
Denver, CO 80202

ATTENTION: Floyd Johnson,
Chief, Inspection & Enforcement

Pursuant to 30 CFR 845.18, I request a conference to review the proposed assessment for violations of Notice of Violation(s) #_____ and/or Cessation Order(s) #_____.

My telephone number is ( ) _____.

_____
(Signature)

_____
(Name and Title)

_____
(Name of Permittee or Operator)

_____
(Address of Permittee or Operator)

Provided your request is **received** within 30 days as provided in 30 CFR 845.18, you will be contacted by a conference officer in order to arrange the time and place of the conference.

Pursuant to 30 CFR 845.18(b)(2), at least 5 days prior to the conference, notice of the time and place of the conference must be posted at the OSM field office that has jurisdiction over the mine. Any person has the right to participate in the conference.