

a



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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

Outgoing
C0070013
#3988
K

January 10, 2012

CERTIFIED RETURN RECEIPT
7009 3410 0001 4203 2024

Mr. Jay Marshall, Resident Agent
UtahAmerican Energy, Inc.
P. O. Box 910
East Carbon, Utah 84520-0910

Subject: Proposed Assessment for State Violation No. N10093, Horse Canyon Mine, C/007/0013, Task ID #3988

Dear Mr. Marshall:

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

Enclosed is the proposed civil penalty assessment for the above referenced violation. The violation was issued by Division Inspector, Joe Helfrich, on December 12, 2011. 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 this 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:

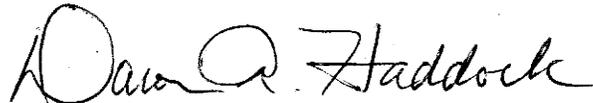
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.



2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (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.

It is our understanding that a request for an Informal Conference has already been scheduled for January 31, 2012 at 9:00 am. We look forward to reviewing this violation with you at that time. If you have any questions, please call me at (801) 538-5325.

Sincerely,



Daron R. Haddock
Assessment Officer

Enclosure

cc: OSM Compliance Report
Suzanne Steab, DOGM
Accounting, DOGM
Price Field Office

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UtahAmerican Energy, Inc.
P.O. Box 910
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2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

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

ASSIGN PROBABILITY OF OCCURRENCE POINTS

PROVIDE AN EXPLANATION OF POINTS:

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS

PROVIDE AN EXPLANATION OF POINTS:

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Actual RANGE 0-25

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

ASSIGN HINDRANCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *The wildlife enhancement project that is part of the plan (appendix 3-7) was not followed. Because of this, the Division's inspector and Biologist could not assess the impacts to wildlife as a result of mining during the 2011 year. A vegetation treatment (limbing) was to have been completed during 2010. The Division allowed an additional year to complete the work so that the BLM could complete the NEPA process, but the work did not get completed during 2011. The plan also called for the Operator to provide funding and materials for the construction of guzzlers for the big horn sheep in the area. This part of the enhancement plan was completed. It appears that there is a lack of communication and follow-through on the vegetation treatment part of the plan. A prudent operator would have notified the Division and discussed alternative options to completing the vegetation treatment or alter the mitigation plan. Some of the problems can be attributed to the BLM's inability to complete the required*

NEPA work in a timely fashion, but clearly part of the blame can be assigned to the Operator not communicating with the Division. For this reason I am assigning hindrance at the lower to mid-point of the range.

TOTAL SERIOUSNESS POINTS (A or B) 8

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE: Ordinary Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

**** According to the information in the inspector statement, the operator was indifferent to the DOGM regulations. Appendix 3-7 of the permit requires certain work to be completed within specific timeframes. In order to accommodate the BLM's NEPA process an additional year was allowed, but the treatment still did not get completed as required. When one piece of the vegetation improvement got delayed, there was no attempt to follow through or explore other options. The Operator appears to be negligent in communicating with the Division and the other agencies. Points are assigned in the mid part of the ordinary negligence range.*

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance (Immediately following the issuance of the NOV)	-11 to -20*
X	Rapid Compliance (Permittee used diligence to abate the violation)	-1 to -10
X	Normal Compliance	0

(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of 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?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- | | | |
|---|---|-------------|
| X | Rapid Compliance
(Permittee used diligence to abate the violation) | -11 to -20* |
| X | Normal Compliance
(Operator complied within the abatement period required) | -1 to -10* |
| X | Extended Compliance
(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) | 0 |

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

****Good faith will be evaluated upon termination of the violation*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 10093

I.	TOTAL HISTORY POINTS	<u>1</u>
II.	TOTAL SERIOUSNESS POINTS	<u>8</u>
III.	TOTAL NEGLIGENCE POINTS	<u>8</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-</u>
	TOTAL ASSESSED POINTS	<u>17</u>
	TOTAL ASSESSED FINE	<u>\$ 374</u>