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

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July 13, 1994

CERTIFIED RETURN RECEIPT
P 074 976 126

Mr. David Pearce
Sunnyside Cogeneration Associates
P.O. Box 58087
Salt Lake City, Utah 84158-0087

Re: Proposed Assessment for State Violation No. N94-26-2- 1, Sunnyside Cogeneration Associates, Sunnyside Refuse & Slurry, ACT/007/035, Folder #5, Carbon County, Utah

Dear Mr. Pearce:

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued on April 22, 1994 by Inspector William J. Malencik 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.

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,

Joseph C. Helfrich
Assessment Officer

/sm

Enclosure
cc: Bernie Freeman, OSM

WORKSHEET FOR ASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING

COMPANY/MINE Sunnyside Cogeneration Associates/Sunnyside Refuse & Slurry

NOV #N94-26-2-1

PERMIT # ACT/007/035

VIOLATION 1 OF 1

ASSESSMENT DATE 7/13/94

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

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

ASSESSMENT DATE 7/13/94

EFFECTIVE ONE YEAR TO DATE 7/13/94

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
N93-40-5-9 1-9	8/17/93	9

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 9

II. SERIOUSNESS (either A or B)

NOTE: **For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.**

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

A. Event Violations Max 45 PTS

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

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? Did not occur.

. . . PROBABILITY	RANGE
. . . None	0
. . . Unlikely	1-9
. . . Likely	10-19
. . . Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS

At the time of the inspection, the silt fence that was being used as a sediment control structure was inoperative.

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

No damage occurred as a result of the violation.

B. Hindrance Violations MAX 25 PTS

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 ____

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A or B) 10

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 - NEGLIGENCE;**
OR Was this violation the result of reckless, knowing, or intentional conduct? **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
The permittee neglected to reinstall the silt fence sediment control structure during the installation of weirs at the Sunnyside coarse refuse seep.

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
. . . **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 in 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

. . . **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, or the plan submitted for abatement was incomplete)

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

EASY OR DIFFICULT ABATEMENT? **ASSIGN GOOD FAITH POINTS** -10

PROVIDE AN EXPLANATION OF POINTS

Immediate compliance was achieve by reinstallation of the silt fence.

V. ASSESSMENT SUMMARY FOR N94-26-2-1

I.	TOTAL HISTORY POINTS	9
II.	TOTAL SERIOUSNESS POINTS	10
III.	TOTAL NEGLIGENCE POINTS	8
IV.	TOTAL GOOD FAITH POINTS	-10
	TOTAL ASSESSED POINTS	7
	TOTAL ASSESSED FINE	$ *

*Less than 50 points, civil penalty is discretionary.

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