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

*Mine file*

Michael O. Leavitt  
Governor

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Executive Director

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Division Director

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Box 145801  
Salt Lake City, Utah 84114-5801  
801-538-5340  
801-359-3940 (Fax)  
801-538-7223 (TDD)

February 18, 1997

CERTIFIED RETURN RECEIPT REQUESTED  
P 074 976 857

Ben Grimes, Project engineer  
Cyprus Plateau Mining Corp.  
P. O. Drawer PMC  
Price, Utah 84501

Re: Hearing Memorandum and Finalized Assessment for State Violation N96-44-1-1, Cyprus Plateau Mining Corp., Willow Creek Mine, ACT/007/038, Folder #5, Carbon County, Utah

Dear Mr. Grimes:

On January 29, 1997, an Informal Hearing and Assessment Conference was held to review the fact of violation and proposed assessment for state violation N96-44-1-1, Willow Creek Mine, Cyprus Plateau Mining Corp. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, please find enclosed a Hearing Memorandum and Finalized Assessment.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within a maximum of thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division, mail c/o Vicki Bailey at the address listed above.

Thank you for your cooperation.

Sincerely,

*Lowell P. Braxton*

Lowell P. Braxton  
Assessment Conference Officer

vb  
Enclosure

cc: James Fulton, OSM  
P:\GROUPS\MINES\WPA\PENALTIE\F007-038.WPD



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February 4, 1997

TO: Mine File

FROM: Lowell P. Braxton, Hearing Officer *LPB*

RE: Notice of Violation (NOV) N96-44-1-1, Cyprus Plateau Mining Company, Willow Creek Mine, Folder #5, ACT/007/038, Carbon County, Utah

At the request of Cyprus Plateau Mining Company (the permittee) an informal hearing to review the fact of the violation and the proposed assessment for Notice of Violation N96-44-1-1 (the NOV) was held in the Division's offices January 29, 1997. Lowell Braxton served as the hearing officer. The permittee was represented by Ben Grimes. The Division was represented by Joe Helfrich, Assessment Officer, Steve Johnson (the Inspector), Pete Hess, and Bob Davidson.

The NOV was issued August 6, 1996, "**For failure to conduct mining and reclamation operations to minimize disturbances to the hydrologic balance.**" Provision of the Act, Regulations or Permit violated: "**R645-301-750, R645-301-731.611.**" Portion of operation to notice applies: "**That portion of Willow Creek that has ceased flowing from 450 feet down stream from the beginning of the lower stream realignment to the confluence with the Price River.**" Abatement: "**reestablish flow to that portion of Willow creek (sic) at a quantity comparable to that of the existing flowing upstream portion as approved by the Division.**"

The NOV was terminated September 4, 1996.

#### Discussion on the Fact of the Violation

Steve Johnson noted that after being advised that portions of Willow Creek were dry he met with Pete Hess, DOGM and John Borla, Cyprus Plateau, on August 2 to review the situation. Steve used Map 28B from the permit to illustrate which reach of Willow Creek was dry on that date, and described stream relocation activities conducted by the permittee in Willow Creek .

On August 2, possible mitigation of the problem was envisaged by flowing a slurry of bentonite and earth materials down the reconstructed channel. The bentonite mix would fill porous zones in the designed channel, thus maintaining flow until storm events could transport natural clays and other fine fractions to more fully approximate natural clay/sand ratios in surface materials in the channel.

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Steve indicated John Borla agreed to initiate the slurry mitigation activity. Issuance of an NOV was discussed on the August 2, but Steve opted to discuss issuance with his management prior to proceeding.

The NOV was mailed on August 6, 1996.

On August 12, Steve, Bob Davidson and Ben Grimes visited the reconstructed channel, and observed dry reaches therein. Steve stated that dry reaches were more extensive than on August 2. Bentonite/slurry remediation activities were initiated early on the 12th.

August 13, first modification of the NOV following request from permittee.

August 20, Permittee, Corps of Engineers, DWR and DOGM representatives meet on site. Flow not fully reestablished, NOV modified again.

Steve indicated that by September 4, seasonal adjusted flows permitted termination of the violation.

Steve summarized his discussion:

- a. Poor construction in the lower portions of the reconstructed channel contributed to dry up of Willow Creek.
- b. The operator did not begin remediation activities for 10 days following initial discussion with the Division.
- c. The operator has a responsibility to protect the hydrologic balance.

Ben Grimes spoke in detail about the permitting history of the Willow Creek channel reconstruction. He discussed complexities attendant to acquiring an Army Corps of Engineers stream relocation permit given the number of commenting agencies, and the conflicting missions of these agencies.

Ben noted that April 19, 1996 issuance of the Corps of Engineers permit included a number of special conditions, including design review and supervision of channel construction by a fluvial geomorphologist. He stated that Cyprus Plateau had complied with this condition.

Ben discussed mandated design details that included placement of 12" of designed rock materials under the rip rap in the low flow portions of the reconstructed channel. The function of this finer rock material was to preclude scour, during flood events, but Ben reviewed concerns that this 12" layer would serve as a "French drain."

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Ben indicated that the Corps of Engineers permit anticipated an assessment of natural sedimentation rates in the reconstructed channel, and inferred that by requiring this assessment the Corps' permit may have anticipated the sort of infiltration that resulted in stream dry up.

Ben reviewed the learning curve required to construct the channel to the specifications of the Corps' permit. He indicated that by the time the construction had progressed through the reach that eventually dried up, the construction contractor and the supervising geomorphologist were producing very satisfactory results, and that the permittee intended to revisit the earliest reaches of the channel reconstruction and bring these up to the later standard.

As the channel construction began to improve, progress was delayed by discovery of diesel contaminated soils that were a result of a previous land use. Removal of the soils resulted in a large hole that was difficult to fill with adequately compacted material due to size constraints of the track hoe on site.

Ben suggested the portion of Willow Creek under construction was a "losing reach", and further suggested the remediation of the diesel contamination could have resulted in increased, short term losses to the stream. And further suggested that this loss could have been enhanced by a minor "hump" in the stream profile at the site of the diesel cleanup.

Ben Grimes discussed his observations that flows were diminishing by late July, noted he made multiple calls to the Corps, but that they felt "no immediate urgency."

Ben reviewed bentonite slurry remediation activities that began on August 12, and described efforts to improve the slurry. He described other activities undertaken by Cyprus Plateau to ensure ultimate abatement of the NOV.

Ben reviewed the August 20 multi-agency meeting previously mentioned by Steve, and noted that a "consensus do list" had been established. Ben further stated his feeling that the August 20 NOV modification was not in comport with the "consensus do list." By August 23 the permittee was in compliance with the terms of the "do list", the Corps designs, but not the modified NOV.

Ben and Steve did not agree on requirements of the "consensus do list."

Ben provided photographic evidence of Willow Creek stream flow at the time the NOV was terminated, and subsequent to the termination. He also provided photos of pre-violation flows that support the attainment of the design concept.

Ben summarized his position on the NOV.

- a. The "French drain" contributed to flow losses.
- b. All agencies consented to the design.
- c. An NOV for following design is not acceptable.
- d. The reach of Willow Creek in question is a "losing reach" based on information at hand.
- e. Construction may have accelerated a natural process.

Additional discussions between Steve and Ben visited the idea that stream dry up only occurred in the lower (less well constructed) portions of the project. The role of the diesel spill remediation "hole" was revisited. Ben stated the Permittees would have reconstructed the lower parts without having been issued an NOV. Both parties agreed that portions of Willow Creek in the area of the reconstruction may be dry one out of three years in July/August.

### **Findings**

1. The informal hearing and assessment conference request was timely, and appropriately noticed.
2. The Division of Oil, Gas and Mining regulates "Coal Mining and Reclamation Operations."
3. The Army Corps of Engineers is responsible for issuance of permits involving stream relocation activities.
4. Cyprus Plateau Mining Company's request for a stream relocation permit from the Army Corps of Engineers is a consequence of "Coal Mining and Reclamation Operations" attendant to development of the Willow Creek Mine.
5. The reach of Willow Creek cited in the NOV was dry at the time the NOV was issued.
6. Cyprus Plateau Mining Company was conducting "Coal Mining and Reclamation Operations" within the channel of Willow Creek at the time flows within Willow Creek ceased.
7. "Coal Mining and Reclamation Operations" must minimize disturbances to the hydrologic balance within the permit area, and prevent material damage to the hydrologic balance outside the permit area.

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8. Stream flow in Willow Creek was visible above the reach impacted by "Coal Mining and Reclamation Operations", and the appropriately constructed channel supported water flow at the time of the NOV.

9. Stream flow in Willow Creek changes seasonally, and periodic dry up of surface flow is historically established.

10. No evidence was presented in the hearing to establish that "Coal Mining and Reclamation Operations" in the form of stream relocation activities had not affected flows in Willow Creek at the time the NOV was issued.

11. Dry up of stream flows outside of a permit area that is attributable to mining is an adverse impact on the hydrologic balance.

#### **Order**

1. NOV N96-44-1-1 is upheld.

#### **Discussion of the Proposed Penalty Assessment.**

Ben Grimes stated that in his opinion the NOV was inappropriately issued, and that no assessment was appropriate under such circumstances. He further noted that Cyprus Plateau had acted in good faith throughout the process.

Steve Johnson indicated the permittee had shown negligence because of the diesel spill. Also, had abatement been started the day issuance of the NOV was discussed with the permittee's representative, total disruption of stream flow might have been avoided.

#### **Finalized Penalty Assessment**

No change from proposed.

#### **Remarks**

Abatement activity may have been delayed in this case because an operator was reluctant to begin remedial action prior to receipt of the violation, and protracted U. S. Postal Service delivery times may have further delayed initiation of abatement operations.

Notwithstanding, an operator or permittee is never precluded from taking appropriate action without having an NOV in hand.

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Issuance of NOV's in the field can preclude the types of delays found in this situation.

In situations where issuance of an NOV from the office has merit, but environmental degradation may be occurring as a function of the alleged nov, the Division might consider faxing the operator a copy of the NOV to avoid time losses due to mail service.

vb

WCN96441

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

COMPANY: Cyprus Plateau Mining Corp.  
PERMIT: ACT/007/038  
VIOLATION: N96-44-1-1

ASSESSMENT OFFICER: Lowell P. Braxton

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	_____	_____
(2) Seriousness	<u>40</u>	<u>40</u>
(3) Negligence	_____	_____
(4) Good Faith	<u>- 10</u>	<u>- 10</u>
Total Points	<u>30</u>	<u>30</u>

TOTAL ASSESSED FINE \$ 400

NARRATIVE: See Hearing Memorandum attached.

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

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DIVISION

OF

OIL GAS & MINING

1594 W NORTH TEMPLE ST

BOX 145801

SALT LAKE CITY UT 84114-5801

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DOGM VB ACT/007/038 N96-44-1-1 IF/AC

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Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1.  Show to whom delivered, date, and addressee's address. 2.  Restricted Delivery (Extra charge)

3. Article Addressed to: BEN GRIMES PROJECT ENGR  
CYPRUS PLATEAU MINING CORP  
P O DRAWER PMC  
PRICE UT 84501

4. Article Number: P 074 976 857

Type of Service:  
 Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Address: *[Signature]*  
X

6. Signature - Agent: *[Signature]*  
X

7. Date of Delivery: 02 25 97

8. Addressee's Address (ONLY if requested and fee paid)

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- If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (an extra charge)
  - If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
  - If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article RETURN RECEIPT REQUESTED adjacent to the number.
  - If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse RESTRICTED DELIVERY on the front of the article.
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  - Save this receipt and present it if you make inquiry. \* U.S.G.P.O. 1988-217-132

PS Form 3800, June 1985

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P 074 976 857

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CYPRUS PLATEAU MINING CORP  
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P O DRAWER PMC  
P.O., State and ZIP Code  
PRICE UT 84501  
Postage \$  
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