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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  
C0070039  
#3723  
K

February 3, 2011

### CERTIFIED RETURN RECEIPT

7005 0390 0000 7507 4870

Erwin Sass, General Manager  
Canyon Fuel Company, LLC  
P.O. Box 1029  
Wellington, Utah 84542

Subject: Proposed Assessment for State Violation No. N 10072, Dugout Canyon Mine, C/007/0039, Task ID #3723, Outgoing File

Dear Mr. Sass:

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, Steve Christensen, on January 5<sup>th</sup>, 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:

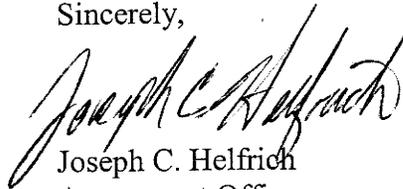
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference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

**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 Suzanne Steab.

Sincerely,



Joseph C. Helfrich  
Assessment Officer

Enclosure

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

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Total Po **Erwin Sass, General Manager**

Sent To	<b>Canyon Fuel Company, LLC</b>
Street, Ap or PO Box	<b>P.O. Box 1029</b>
City, State	<b>Wellington, UT 84542</b>

PS Form 3800, June 2002

See Reverse for Instructions

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

COMPANY / MINE Dugout Canyon Mine

PERMIT C/007/0039

NOV / CO # N 10072

VIOLATION 1 of 1

ASSESSMENT DATE February 3, 2011

ASSESSMENT OFFICER Joe Helfrich

**I. HISTORY (Max. 25 pts.)**

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

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
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1 point for each past violation, up to one (1) year  
5 points for each past violation in a CO, up to one (1) year  
No pending notices shall be counted

**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Either A or B)**

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

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the 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 VIOLATION (Max 45 pts.)

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

Water pollution and,

*According to the information in the inspector statement "During a field inspection conducted on December 16<sup>th</sup>, 2010, orange staining of the Pace Creek channel was observed outside of the permit area. The orange staining is a result of mine-water discharged from the Pace Canyon Fan facility (UPDES Outfall 005) that contributed additional suspended solids to streamflow outside the permit area".*

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 20**

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\*According to the information in the inspector statement, "High iron concentration mine water discharged from the Pace Canyon Fan facility (UPDES Outfall 005) resulting in an orange discoloration of the Pace Creek channel outside the permit area".*

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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

*\*\*\* According to the information in the inspector statement, no known damage occurred as a result of the violation.*

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 \_\_\_\_\_**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

**TOTAL SERIOUSNESS POINTS ( A or B ) 20**

**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 Greater Degree of Fault

**ASSIGN NEGLIGENCE POINTS 0**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* According to the information in the inspector statement, "Due to safety considerations in the underground mine-works, the Permittee was forced to seal the Gilson 8 coal panel prematurely resulting in the discharge of polluted water that produced the orange staining of the Pace Creek channel outside of the permit area".

**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 (Operator complied within the abatement period required)	0

(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? Difficult, plans were required

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

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

**V. ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # <u>N 10047</u>	
I.	TOTAL HISTORY POINTS <u>0</u>
II.	TOTAL SERIOUSNESS POINTS <u>20</u>
III.	TOTAL NEGLIGENCE POINTS <u>0</u>
IV.	TOTAL GOOD FAITH POINTS <u>0</u>
	TOTAL ASSESSED POINTS <u>20</u>
	<b>TOTAL ASSESSED FINE <u>\$ 440</u></b>