

0003



Norman H. Bangertter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

File

December 3, 1991

CERTIFIED RETURN RECEIPT
P 074 979 164

Mr. Dwight Crossland
Western States Minerals
84 Glen Carran Circle
Sparks, Nevada 89431

Dear Mr. Crossland:

Re: Proposed Assessment for State Violation No. N91-35-7-1, Western States Minerals, J.B. King Mine, ACT/015/002, Folder #5, Emery County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under R614-401.

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued by Division Inspector, Susan M. White on November 19, 1991. Rule R614-401-600 et. sec. 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.

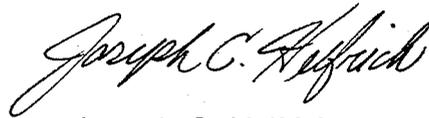
Under R614-401-700, there are two informal appeal options available to you:

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

jbe
Enclosure

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

COMPANY/MINE Western States Minerals/J.B. King Mine

NOV #N91-35-7-1

PERMIT # ACT/015/002

VIOLATION 1 OF 1

ASSESSMENT DATE 11/26/91

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 11/26/91

EFFECTIVE ONE YEAR TO DATE 11/26/90

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

- 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 0

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?
Damage to property and loss of reclamation/revegetation potential.
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? Occurred

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

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

The inspector's statement revealed that erosion and loss of topsoil had occurred as a result of the violation, thus potentially exposing acid-forming materials.

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 6

PROVIDE AN EXPLANATION OF POINTS

Information provided by the inspector revealed that the formation of the rills and gullies, failure of the silt fence(s), and subsequent exposure of acid-forming material occurred over a period of approximately two years covering the eastern half of the reclaimed site or approximately 8 to 10 acres.

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) 26

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 Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 16

PROVIDE AN EXPLANATION OF POINTS

The inspector's statement revealed that the operator was in violation of a specific permit condition, as well as receiving prior warning of noncompliance by state or federal inspectors concerning the disposition of the violation. Additionally, the inspector's statement revealed that the operator was required by a permit stipulation to provide a more permanent solution to the erosion on site than the existing silt fences and placement of straw in the gullies. This practice had continued since August 1990. The operator had continued to place straw in some gullies but had not maintained the silt fences or proposed a better solution to the erosion problem. Inspector reports indicated that since May 1991, the operator had been asked to do on site maintenance. The maintenance had been postponed, pending stipulation response. No response was submitted.

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)**

