

0015



1407 West North Temple
P.O. Box 899
Salt Lake City, Utah 84110

*orig file
cc Mine file*

*ACT/015/019 #7
ACT/005/009 #7*

May 23, 1985

Ms. Dianne Nielson, Director
State of Utah
Department of Natural Resource
Division of Oil, Gas & Mining
355 West North Temple
3 Triad Center, Suite 400
Salt Lake City, Utah 84180-1204

RECEIVED

MAY 30 1985

SUBJECT: NOV-N83-5-1-1

DIVISION OF OIL
GAS & MINING

Dear Ms. Nielson:

I am hoping you can clear up a nagging problem.

A violation was issued in 1983 against the Wilberg Mine for failure to maintain a collection ditch in Cottonwood Canyon. The problem stems from a temporary diversion pipe placed there by personnel from the Trail Mountain Mine to accommodate work being done on their property. Apparently the pipe ended up in our ditch interrupting its function resulting in a violation to Utah Power & Light Company.

Having given verbal permission to Trail Mountain for the temporary diversion, I called them about the violation and was assured the abatement work and violation would be taken care of. Not until recently did I learn that this matter had hit a snag.

Communications between the Division and Trail Mountain Coal Company resulted in a letter instructing Trail Mountain to withdraw from further involvement. The letter also stated "a conference has not been requested at this time". The date of this letter was April 20, 1983, ninety (90) days after the Division's notice for assessment; sixty (60) days past the deadline for requesting a conference. Initially, a copy of this letter was not sent to Utah Power & Light Company.

It appears our options are limited. However, in the name of fairness, we respectfully request that the matter be resolved through the administrative process or by granting a delayed assessment conference.

Ms. Dianne Nielson
May 23, 1985
Page 2

It must be noted that Trail Mountain fully accepts the responsibility. It seems the problem lies in the Division's inflexibility to correct its mistake.

We will not pursue this matter beyond your office. Thank you for your consideration.

Sincerely,



C. E. Shingleton
Director of Permitting,
Compliance & Services
Mining and Exploration

CES:bb:4892
Enclosures

cc: Ralph Jerman
Larry Guymon (EMC)

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS & MINING

1588 West North Temple
Salt Lake City, Utah 84116
Telephone: (801) 533-5771

To UPRC
1-18-82

NOTICE OF VIOLATION NO. N 83-5-1-1

From the STATE OF UTAH
To the Following Permittee or Operator:

NAME Utah Power and Light Company

MINE Cottonwood Portal SURFACE UNDERGROUND OTHER

CATEGORY OF OWNERSHIP: STATE FEDERAL FEE MIXED

OSM MINE NO. _____ STATE PERMIT NO. 40-105-1027 MSHA I.D. NO. _____

COUNTY AND STATE Emery County, Utah TELEPHONE _____

MAILING ADDRESS: P.O. Box 899, SLC, Utah 84110

DATE OF INSPECTION Jan 6, 1983

TIME OF INSPECTION: FROM 1:20 a.m. to 4:30 e.m.
 p.m. to _____ p.m.

NAME OF OPERATOR (if other than permittee) Emery Mining Company

MAILING ADDRESS: _____

Under the authority of the Utah Coal Mining and Reclamation Act of 1979 (Sec. 40-10-1 et seq., Utah Code Annotated, 1953), the undersigned authorized representative of the Director and the Division of Oil, Gas & Mining has conducted an inspection of the above mine on the above date and has found violation(s) of the Act, the regulations or required permit condition(s) listed in the attachment(s). This Notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is is not expressly or in practical effect required by this Notice. For this purpose "Mining" means extracting coal from the earth or a waste pile and transporting it within or from the minesite.

This Notice shall remain in effect until it expires as provided on the reverse or is modified, terminated or vacated by written notice of an authorized representative of the Director of the Division of Oil, Gas & Mining. The time for abatement may be extended by the authorized representative for good cause, if a request is made within a reasonable time before the end of the abatement period.

Date of Service 1-10-83 John J. Whitehead
SIGNATURE OF AUTHORIZED REPRESENTATIVE

Time of Service 11:50 a.m. John J. Whitehead #5
 p.m. NAME AND I. D. NO.

Person Served with Notice mailed to operator
PRINT NAME AND TITLE

Signature _____



DEPARTMENT OF NATURAL RESOURCES - DIVISION OF OIL, GAS, AND MINING

56 64 16

1588 West North Temple - Salt Lake City, Utah 84116 - (801) 533-5771

STATE OF UTAH

Notice of Violation No. N 82-5-1-1

Violation No. 1 of 1

Nature of the Violation

Failure to maintain diversions in a manner which prevents additional contributions of sediment to runoff outside the permit area. Failure to pass all surface drainage from the disturbed area through a treatment facility before leaving the permit area.

Provision(s) of the Regulations, Act, or Permit Violated

U.C.A (1953) 40-10-18 (i), (ii)
U.M.C 817.41
U.M.C 817.42 (a)(1)
U.M.C 817.43 (c)

Portion of the Operation to which Notice Applies

Diversion ditch along eastern side of access road up Cottonwood Canyon. Ditch above upper sediment basin.

Remedial Action Required (including interim steps, if any)

Maintain diversion ditch in accordance with U.M.C 817.43(c). Pass all surface drainage from the disturbed area through a treatment facility before leaving the permit area.

Time for Abatement (including time for interim steps, if any)

30 days, no later than Feb. 10, 1983



A SAVAGE BROTHERS COMPANY

January 24, 1983

State of Utah

Department of Natural Resources
Division of Oil, Gas and Mining
1588 West North Temple
Salt Lake City, UT 84116

ATTENTION: ~~JOHN WHITEHEAD~~

Dear John:

This letter is a formal request to have N.O.V. 83-5-1-1 dated 1/10/83 written to Trail Mountain Coal Mine instead of to Utah Power and Light for the following reasons:

Utah Power and Light gave Trail Mountain a temporary right-of-way down the diversion ditch on the east side of the road for a by-pass pipeline. Terms of the agreement were that as long as Trail Mountain used the right-of-way they would maintain the diversion and accept responsibility for violations of any State and Federal regulations of either the OSM or DOGM.

This was a verbal agreement between Chris Shingleton, Utah Power and Light and Alan Childs of Trail Mountain Coal Company.

Your attention to this request is appreciated.

Sincerely,

Larry J. Guymon
Manager of Construction Engineering

LJG/bb

cc: Chris Shingleton



STATE OF UTAH
NATURAL RESOURCES & ENERGY
Oil, Gas & Mining

Scott M. Matheson, Governor
Temple A. Reynolds, Executive Director
Cleon B. Feight, Division Director

241 State Office Building • Salt Lake City, UT 84114 • 801-533-5771

TO UPS
1-12-83

January 10, 1983

REGISTERED RETURN RECEIPT REQUESTED

Mr. Larry Guymon, Engineer
Emery Mining Corporation
P.O. Box 310
Huntington, Utah 84528

RECEIVED
JAN 12 1983
EMERY MINING CORP
ENGINEERING

Dear Mr. Guymon:

Pursuant to the inspection conducted on January 6, 1983, on the Cottonwood Portal, please find enclosed NOV 83-5-1-1.

As we discussed during our phone call today, February 10, 1983 is the abatement deadline for re-establishing the diversion ditch and assuring all flow from the ditch does not leave the permit area without passing through a treatment facility.

If you have any questions concerning this matter please feel free to contact me.

Sincerely,

JOHN J. WHITEHEAD
FIELD SPECIALIST

JJW/lm

enclosure



STATE OF UTAH
NATURAL RESOURCES & ENERGY
Oil, Gas & Mining

241 State Office Building • Salt Lake City, UT 84114 • 801-533-5771

Scott M. Matheson, Governor
Temple A. Reynolds, Executive Director
Gleon B. Feight, Division Director

RECEIVED
MAR 9 1983

EMERY MINING CORP.
ENGINEERING

January 21, 1983

RECEIVED
JAN 26 1983
LEGAL DEPT
UP & L

RECEIVED

CERTIFIED RETURN RECEIPT REQUESTED

Mr. Ralph Jerman
Utah Power & Light
P.O. Box 899
Salt Lake City, Utah 84110

RE: Proposed
Assessment for
State Violation
No. N83-5-1-1

JAN 28 1983
MINING AND
EXPLORATION

Dear Mr. Jerman:

The undersigned has been empowered by the Board of Oil, Gas and Mining to act as the Assessment Officer and conduct informal conferences on violations and assessments.

Enclosed you will find the proposed civil penalty assessment for the afore referenced violation(s). The aforesaid violation(s) was issued by Division Inspector John Whitehead on the 10th of January 1983. I have utilized Rule UMC/SMC 845.2 et seq to formulate the proposed penalty.

A request for an assessment conference must be submitted within thirty (30) days after receipt of this letter. Should you request an assessment conference you may contest either the occurrence of the violation, the proposed penalty or both.

If no timely request for an assessment conference is made, I shall review all pertinent data and make a final penalty assessment. The fine assessed must be paid to the Division of Oil, Gas and Mining within thirty (30) days of receipt of the proposed assessment. Failure to comply with the above-stated statutory requirements shall result in a waiver of your right of further recourse.

Mr. Ralph Jerman
ACT/015/027
January 21, 1983
Page Two

You should further be aware that a request, after an assessment conference, to appear before the Board of Oil, Gas and Mining will not be granted unless the proposed penalty monies are properly and timely escrowed with the Division of Oil, Gas and Mining.

Sincerely,



RONALD W. DANIELS
ACTING ASSESSMENT
OFFICER

RWD/lm

cc: Larry Gynon, Utah Power & Light Company

ASSESSMENT WORKSHEET

NOV# N83-5-1-1

PERMIT# ACT/015/027

Name of Company Utah Power & Light/Cottonwood

Violation # 1 of 1

POINTS

- 1. History of previous violations 2
- 2. Seriousness (either A or B)

- A. (1) Probability of occurrence 17
- (2) Extent of potential or actual damage 18

B. Obstruction to enforcement --

Total Seriousness 35

3. Negligence 8

4. Good Faith (Will be considered after complete information is received) --

TOTAL POINTS 45

ASSESSMENT \$ 800.00

Violation # -- of --

POINTS

- 1. History of previous violations _____
- 2. Seriousness (either A or B)

- A. (1) Probability of occurrence _____
- (2) Extent of potential or actual damage _____

B. Obstruction to enforcement _____

Total Seriousness _____

3. Negligence _____

4. Good Faith (Will be considered after complete information is received) _____

TOTAL POINTS _____

ASSESSMENT \$ _____

ASSESSMENT EXPLANATION

NOV# N83-5-1-1

PERMIT# ACT/015/027

Name of Company Utah Power & Light Co./Cottonwood

Violation # 1 of 1

History of previous violations: N82-2-2-2 effective 2/20/83 = 2 points

Seriousness: (either A or B)

A. (1) Probability of occurrence:

The violation, failure to maintain diversions to prevent additional contribution of sediment to runoff, is deemed to have resulted in the occurrence of the event of water pollution. 17 points.

(2) Extent of actual or potential damage:

Damage left the permit area. 18 points.

B. Obstruction to enforcement: -----

Negligence: ORDINARY NEGLIGENCE 8 points

Good Faith: WILL BE CONSIDERED AFTER COMPLETE INFORMATION IS RECEIVED

TO UP&L
2-8-83



SCOTT M. MATHESON
Governor

OIL, GAS, AND MINING BOARD

GORDON E. HARMSTON
Executive Director,
NATURAL RESOURCES

STATE OF UTAH ^{LJG}
DEPARTMENT OF NATURAL RESOURCES

CHARLES R. HENDERSON
Chairman

CLEON B. FEIGHT
Director

DIVISION OF OIL, GAS, AND MINING
1588 West North Temple
Salt Lake City, Utah 84116
(801) 533-5771

JOHN L. BELL
C. RAY JUVELIN
THADIS W. BOX
MAXILIAN A. FARBMAN
EDWARD T. BECK
E. STEELE McINTYRE

Vacation or Termination of Notice or Order

To the Following Permittee or Operator:

Name _____

Mailing Address _____

State Permit No. _____

Utah Coal Mining and Reclamation Act, Section 40-10-1 et. seq., Utah Code Annotated (1953):

Notice of Violation No. N _____ Y TV dated _____, 19____.

Cessation Order No. C _____ Y TV dated _____, 19____.

Violation No. _____ is hereby _____ Terminated _____ Vacated because:

Violation No. _____ is hereby _____ Terminated _____ Vacated because:

Violation No. _____ is hereby _____ Terminated _____ Vacated because:

Date of Service _____
Signature of Authorized Representative

Time of Service or Mailing _____ a.m. _____ p.m. _____
Name and I.D. No.



STATE OF UTAH
NATURAL RESOURCES & ENERGY
Oil, Gas & Mining

4241 State Office Building • Salt Lake City, UT 84114 • 801-533-5771

Scott M. Matheson, Governor
Temple A. Reynolds, Executive Director
Cleon B. Feight, Division Director

February 23, 1983

RECEIVED
MAR 3 1983

Mr. Larry J. Guymon
Manager of Construction Engineering
Emery Mining Corporation
P.O. Box 310
Huntington, Utah 84528

EMERY MINING CORP.
ENGINEERING

RE: Cottonwood Portal
ACT/015/027, #7
NOV N83-5-1-1

Dear Mr. Guymon:

This letter is to acknowledge receipt of your letter of January 24, 1983 regarding transferring responsibility for NOV N83-5-1-1 from Utah Power & Light to Trail Mountain Coal Mine.

In reviewing your request for transferring the NOV it would appear to me that more substantive documentation would be needed. The verbal agreement between Chris Shingleton of Utah Power & Light and Alan Childs of Trail Mountain Coal Company would need to be documented more formally. A written acknowledgement from Alan Childs accepting responsibility and payment of the fine for this violation would be appropriate.

While I am not certain how the Division will proceed, upon receipt of this information from Alan Childs, you may want to present the essence of this situation in an assessment conference. If you have any additional questions on this matter, please feel free to contact myself or Ron Daniels in his capacity as assessment officer.

Sincerely,

JOHN J. WHITEHEAD
FIELD SPECIALIST

JJW/lm

cc: Ron Daniels, DOGM

April 20, 1983

ACT/045/009

REGISTERED RETURN RECEIPT REQUESTED

P 324 743 165

Mr. Allen Childs
Natomas Trail Mountain Coal Company
P.O. Box 511
Orangeville, Utah 84537

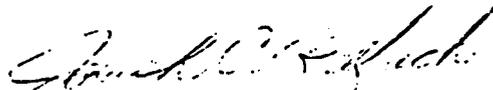
RE: Utah Power & Light
NOV N83-5-1-1

Dear Allen:

Pursuant to your letter to myself dated April 14, 1983 and subsequent phone conversation the Division is of the following opinion. That the violation was a result of non-compliance within the permit area of the Cottonwood Portal permit and therefore is a liability of Utah Power & Light Company. As a point of clarification the proposed assessment has been determined at a civil penalty of \$800.00. A conference has not been requested at this time nor has there been any final assessment proposed. The Division is of the opinion that Natomas Trail Mountain Coal Company should not become involved with the civil penalties and appeals procedures pursuant to NOV N83-5-1-1.

Please call if you have any questions.

Sincerely,


JOSEPH C. HELFRICH
FIELD SUPERVISOR

JCH/lm

cc: Dave Lof, DOGM

NATOMAS
TRAIL
MOUNTAIN
COAL
COMPANY

April 14, 1983

Joe Helfrish
State of Utah
Division of Oil, Gas, and Mining
4241 State Office Building
Salt Lake City, Utah 84114

Dear Joe,

As per our telephone conversation on 4-14-83 acknowledging my concern over N.O.V. 83-5-1-1 issued to Utah Power and Light Company (Cottonwood Portal) on Jan. 6th, 1983, I am submitting this letter as a follow up.

On Jan. 24, 1983, Mr. Larry Guymon of Emery Mining submitted a formal request to have N.O.V. 83-1-1, date 1-10-83 written to Trail Mountain Coal instead of to Utah Power and Light. In his submittal, Mr. Guymon stated that Trail Mountain Coal Co. had an agreement with Utah Power and Light to accept responsibility for any violations of any State and Federal regulations of either the O.S.M. or D.O.G.M.

Prior to my assuming the engineering duties at Trail Mnt. Coal, Mr. Andy King had initiated an agreement with Utah Power and Light through Mr. Chris Shingleton for a right-of-way by-pass pipeline.

As you are aware, since the first of the year, Natomas Trail Mountain Coal has put forth a great deal of effort to bring our mine site into a state of compliance and be free of future violations.

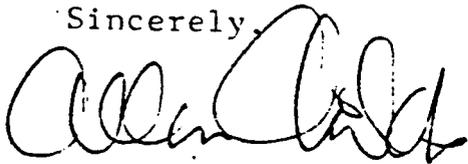
By assuming the above mentioned violation, Trail Mnt. Coal would fall into a pattern of violation category which we do not want to happen.

I will say that I feel responsible for the violation, because Trail Mnt. Coal contracted snow removal and grader service from a private contractor and the violation was due to snow and road blading being graded into Utah Power and Lights burrow pit area, causing it to fill up during a several month period.

In an effort to be a good neighbor to Utah Power and Light, I would be willing to assume this violation if it did not put us into a pattern of violation situation.

I would also mention that neither Mr. King, or myself are empowered by Natomas to make any contractual agreements, written or verbal.

Sincerely,



Allen Childs
Chief Engineer

Enclosure



STATE OF UTAH
 NATURAL RESOURCES
 Oil, Gas & Mining

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

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

March 13, 1985

RECEIVED
 MAR 18 1985

CERTIFIED RETURN RECEIPT REQUESTED
 P. 402 457 349

EMERY MINING CORP.
 ENGINEERING

Mr. Larry Guymon
 Emery Mining Corporation
 P. O. Box 310
 Huntington, Utah 84528

RECEIVED

MAR 20 1985

MINING AND
 EXPLORATION

Dear Mr. Guymon:

RE: Finalized Assessment for State Violation No. N83-5-1-1
ACT/015/019, Folder # 7, Emery, County, Utah

The civil penalty for the above referenced violation has been finalized. This assessment has been finalized as a result of a review of all pertinent data and facts which were not available on the date of the proposed assessment, due to the length of the abatement period.

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 have escrowed the assessed civil penalty with the Division within a maximum of 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 to the Division within thirty (30) days of your receipt of this letter.

Thank you for your cooperation.

Sincerely,

RW Daniels
 Ronald W. Daniels
 Assessment Officer

re
 cc: Donna Griffin, DSM Albuquerque Field Office
 B. Roberts, Attorney Generals Office

9099Q

cc. Bill Zeller Chris Shingleton UPSL

11/1/85

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

COMPANY/MINE Utah Power and Light NOV #N83-5-1-1

PERMIT # ACT/015/019 VIOLATION 1 OF 1

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 3-12-85 EFFECTIVE ONE YEAR DATE 3-12-84

PREVIOUS VIOLATIONS	EFF.DATE	PTS	PREVIOUS VIOLATIONS	EFF.DATE	PTS
<u>N82-2-2-2</u>	<u>2-20-82</u>	<u>2</u>			

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 2

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 violation falls. Beginning at the mid-point of the category, the AO 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?

PROBABILITY	RANGE	MID-POINT
None	0	
Insignificant	1-4	2
Unlikely	5-9	7
Likely	10-14	12
Occurred	15-20	17

ASSIGN PROBABILITY OF OCCURRENCE POINTS 17

PROVIDE AN EXPLANATION OF POINTS Midpoint

3. Would or did the damage or impact remain within the exploration or permit area? No

	RANGE	MID-POINT
Within Exp/Permit Area	0-7*	4
Outside Exp/Permit Area	8-25*	16

*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 18

PROVIDE AN EXPLANATION OF POINTS Damage left the permit area.

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? 0

	RANGE	MID-POINT
Potential hindrance	1-12	7
Actual hindrance	13-25	19

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

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS _____

TOTAL SERIOUSNESS POINTS (A or B) 35

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.

		MID-POINT
No Negligence	0	
Negligence	1-15	8
Greater Degree of Fault	16-30	23

STATE DEGREE OF NEGLIGENCE Ordinary
 ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS _____

IV. GOOD FAITH MAX -20 PTS. (either A or B)

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)

*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 SITUATION

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)

EASY OR DIFFICULT ABATEMENT? N/A ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS

V. ASSESSMENT SUMMARY FOR N83-5-1-1

I. TOTAL HISTORY POINTS	<u>2</u>
II. TOTAL SERIOUSNESS POINTS	<u>35</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>
TOTAL ASSESSED POINTS	<u>45</u>
TOTAL ASSESSED FINE	<u>\$ 800</u>

Ronald W. Daniels

ASSESSMENT DATE 3-12-85 ASSESSMENT OFFICER RWD

 PROPOSED ASSESSMENT X FINAL ASSESSMENT