



0025

STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

File
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

July 15, 1985

CERTIFIED RETURN RECEIPT REQUESTED
PO01 861 891

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

Dear Mr. Guymon

RE: Proposed Assessment for State Violation Nos. N85-2-6-1, and
N85-2-8-1, ACT/O15/O17, Folder #8, Emery County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under UMC/SMC 845.11-845.17.

Enclosed is the proposed civil penalty assessment for the above referenced violations. These violations were issued by Division Inspector Sandy Pruitt, N85-2-6-1 on April 24, 1985 and N85-2-8-1 on June 6, 1985. Rule UMC/SMC 845.2 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 15 days of receipt of this notice of violation, has been considered in determining the facts surrounding the violation and the amount of penalty.

Within fifteen (15) days after receipt of this proposed assessment, you or your agent may file a written request for an assessment conference to review the proposed penalty. (Address a request for a conference to Ms. Jan Brown, at the above address.) If no timely request is made, all pertinent data will be reviewed and the penalty will be reassessed, if necessary, for a finalized assessment. Facts will be considered for the final assessment which were not available on the date of the proposed assessment, due to the length of the abatement period. This assessment does not constitute a request for payment.

Mary Ann Wright
Mary Ann Wright
Assessment Officer

Sincerely,

Mike Earl
Mike Earl
Assessment Officer

re

Enclosure

cc: D. Griffin, OSM Albuquerque Field Office
73140
an equal opportunity employer

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

COMPANY/MINE Utah Power and Ligth/Des-Bee-Dove NOV # N85-2-6-1

PERMIT # ACT/015/017 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 July 9, 1985 EFFECTIVE ONE YEAR DATE July 10, 1984

PREVIOUS VIOLATIONS	EFF.DATE	PTS	PREVIOUS VIOLATIONS	EFF.DATE	PTS
<u>N84-2-22-1</u>	<u>6-14-85</u>	<u>1</u>			
<u>N84-7-8-4</u>	<u>6-14-85</u>	<u>3</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 4

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? Hindrance

A. Event Violations MAX 45 PTS

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

PROVIDE AN EXPLANATION OF POINTS _____

3. Would or did the damage or impact remain within the exploration or permit area?

	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 _____

PROVIDE AN EXPLANATION OF POINTS _____

B. Hindrance Violations MAX 25 PTS

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

	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 5

PROVIDE AN EXPLANATION OF POINTS Per inspector, the failure to report NPDES noncompliance within five days does not allow DOGM to evaluate the problem while it is current and possibly change the operation to prevent future NOV's. Did not hinder entire inspection.

TOTAL SERIOUSNESS POINTS (A or B) _____

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 Negligence
ASSIGN NEGLIGENCE POINTS 9

PROVIDE AN EXPLANATION OF POINTS Violation was due to a lack of knowledge about this "fairly obscure regulation". However, it is also required by EPA for NPDES reporting.

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

COMPANY/MINE Utah Power & Light/Des-Bee-Dove NOV # N85-2-8-1
 PERMIT # ACT/015/017 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 6-25-85 EFFECTIVE ONE YEAR DATE 6-26-84

PREVIOUS VIOLATIONS	EFF.DATE	PTS	PREVIOUS VIOLATIONS	EFF.DATE	PTS
<u>N84-2-22-1</u>	<u>6-14-85</u>	<u>1</u>			
<u>N84-7-8-4</u>	<u>6-14-85</u>	<u>3</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					<u>4</u>

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? Loss of reclamation/revegetation potential
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 6

PROVIDE AN EXPLANATION OF POINTS Per inspector statement small gullies have formed in the access road to the pre act site and in the undisturbed area adjacent to the site. Erosion could increase affecting the revegetation potential but rated as unlikely by inspector if taken care of.

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 8

PROVIDE AN EXPLANATION OF POINTS Inspector states that a gully approximately 3 feet deep has formed along the access. Also a gully approximately 6 feet deep and 8 feet wide has formed in the adjacent undisturbed area. The pre act area is located next to the permitted disturbed area but will not be reclaimed due to its pre act status.

B. Hindrance Violations MAX 25 PTS

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

	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) 14

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.

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

STATE DEGREE OF NEGLIGENCE Greater degree of fault
 ASSIGN NEGLIGENCE POINTS 18

PROVIDE AN EXPLANATION OF POINTS During a joint inspection on April 24, 1985 with OSM the problem of erosion and stabilization were discussed with the operator.

