

0027



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

Michael O. Leavitt  
Governor

Ted Stewart  
Executive Director

James W. Carter  
Division Director

355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203  
801-538-5340  
801-359-3940 (Fax)  
801-538-5319 (TDD)

January 9, 1996

CERTIFIED RETURN RECEIPT  
P 074 979 426

Val Payne  
Sr. Environmental Engineer  
PacifiCorp Energy West  
P. O. Box 310  
Huntington, Utah 84528

Re: Proposed Assessment for State Violation No. 95-35-2-1, PacifiCorp, Deer Creek Mine, ACT/015/018, Folder #5, Emery County, Utah

Dear Mr. Payne:

The undersigned has been appointed by the Board of Oil, Gas and 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, Susan White on August 23, 1995. Rule R645-401-600 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 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 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 one, the Assessment Conference will be scheduled immediately following that review.



Page 2  
N-95-35-2-1  
ACT/015/018  
January 9, 1996

**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

mt  
Enclosure  
cc: James Fulton, OSM  
015018.paf

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

COMPANY/MINE PacifiCorp / Deer Creek Mine

NOV #N-95-35-2-1

PERMIT # ACT/015/018

VIOLATION 1 OF 1

ASSESSMENT DATE 01/04/96

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

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

ASSESSMENT DATE 01/04/96

EFFECTIVE ONE YEAR TO DATE 01/04/95

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

—

—

—

One point for each past violation, up to one year;

Five points for each past violation in a CO, up to one year;

No pending notices will 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? 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

None

0

Unlikely

1-9

Likely

10-19

Occurred

20

ASSIGN PROBABILITY OF OCCURRENCE POINTS \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

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**

PROVIDE AN EXPLANATION OF POINTS

**B. Hindrance Violations MAX 25 PTS**

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

**RANGE 0 - 25**

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

**ASSIGN HINDRANCE POINTS 20**

PROVIDE AN EXPLANATION OF POINTS

The inspector statement revealed that the permit condition required analysis of fill material prior to hauling to the Rilda Canyon site. Fill material was brought on site and placed in a riparian area prior to testing and knowledge of alkalinity or toxicity.

**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.**

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

**ASSIGN NEGLIGENCE POINTS 30**

PROVIDE AN EXPLANATION OF POINTS

The permittee was given written approval to develop the Rilda Canyon site with specific permit conditions. The inspector, (Susan White) spoke with the permittee's representative, Mr. Val Payne the morning the fill was to be delivered to the site. Mr. Payne was advised that if delivery took place it would be a violation of the approved permit conditions. As a result the fill was delivered.

**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)

**Normal Compliance 0**

(The operator complied within the abatement period required)

(The operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

\* Assign in upper or lower half of range depending on abatement occurring in first or second 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

**Rapid Compliance -11 to -20\***

(Permittee used diligence to abate the violation)

**Normal Compliance -1 to -10\***

(The 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)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT?

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS

No abatement beyond the cessation of the unauthorized activities was required by the notice of the violation.

**V. ASSESSMENT SUMMARY FOR N-95-35-2-1**

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>20</u>
III.	TOTAL NEGLIGENCE POINTS	<u>30</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-0</u>
	TOTAL ASSESSED POINTS	<u>50</u>
	TOTAL ASSESSED FINE	<u>\$ 1000.00</u>