0022
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

File

May 24, 1985

CERTIFIED RETURN RECEIPT REQUESTED
P 402 457 686

Mr. Ken Payne
Southern Utah Fuel Company
P. O. Box P
Salina, Utah 84654

Dear Mr. Payne:

RE: Proposed Assessment for State Violation No. N85-6-1-1, N85-6-4-1, ACT/041/002, Folder #8, Sevier 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 violation. This violations weres issued by Division Inspector Barton Kale on January 15, 1985 (N85-6-1-1) and March 12, 1985 (N85-6-4-1). 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.

Sincerely,

Mary Ann Wright
Assessment Officer

re
Enclosure
cc: D. Griffin, OSM Albuquerque Field Office
73140

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

COMPANY/MINE SUFCO/Convulsion Canyon NOV # N85-6-1-1

PERMIT # ACT/041/002 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 5-22-85 EFFECTIVE ONE YEAR DATE 5-23-84

PREVIOUS VIOLATIONS	EFF.DATE	PTS	PREVIOUS VIOLATIONS	EFF.DATE	PTS

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 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 6

PROVIDE AN EXPLANATION OF POINTS Per inspectors statement, lack of water sample data for the small area exemption areas has potentially hindered DOGM from analyzing compliance. Assessed down for not affecting entire inspection.

TOTAL SERIOUSNESS POINTS (A or B) 6

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 Per inspector, lack of diligence was demonstrated in not sampling as required.

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? easy ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS No good faith warranted since abatement was required immediately and involves future sampling.

ASSESSMENT SUMMARY FOR N85-6-1-1

I.	TOTAL HISTORY POINTS	0
II.	TOTAL SERIOUSNESS POINTS	6
III.	TOTAL NEGLIGENCE POINTS	9
IV.	TOTAL GOOD FAITH POINTS	0
	TOTAL ASSESSED POINTS	15
	TOTAL ASSESSED FINE	$ 150

Mary Ann Wright

ASSESSMENT DATE May 22, 1985 ASSESSMENT OFFICER Mary Ann Wright

X PROPOSED ASSESSMENT _____ FINAL ASSESSMENT

7313Q

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

COMPANY/MINE SUFCO/Convulsion Canyon NOV # N85-6-4-1

PERMIT # ACT/041/002 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 5-22-85 EFFECTIVE ONE YEAR DATE 5-23-84

PREVIOUS VIOLATIONS	EFF.DATE	PTS	PREVIOUS VIOLATIONS	EFF.DATE	PTS

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 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? 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 _____

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 9

PROVIDE AN EXPLANATION OF POINTS Per inspector, a change in the routing of disturbed area drainage without demonstration that the pond was sized properly for the additional runoff hindered inspector from knowing if there was a problem.

TOTAL SERIOUSNESS POINTS (A or B) 9

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 6

PROVIDE AN EXPLANATION OF POINTS The NOV was issued for failing to conduct mining activities with the proper approvals. Changes to the mining plan need to be made prior to implementation.

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? easy ASSIGN GOOD FAITH POINTS -7

PROVIDE AN EXPLANATION OF POINTS Two week abatement period given. NOV was abated in 3 days.

V. ASSESSMENT SUMMARY FOR N85-6-4-1

I.	TOTAL HISTORY POINTS	0
II.	TOTAL SERIOUSNESS POINTS	9
III.	TOTAL NEGLIGENCE POINTS	6
IV.	TOTAL GOOD FAITH POINTS	-7
	TOTAL ASSESSED POINTS	8
	TOTAL ASSESSED FINE	$ 80

ASSESSMENT DATE May 22, 1985 ASSESSMENT OFFICER Mary Ann Wright

X PROPOSED ASSESSMENT _____ FINAL ASSESSMENT

7313Q