

0017

TT DOC# 11/19/97 ACT/041/002 NO7-46-4-3

**SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1.  Show to whom delivered, date, and addressee's address.    2.  Restricted Delivery (Extra charge)

<p>3. Article Addressed to:</p> <p>KEN MAY CANYON FUEL CO 397 S 800 W SALINA UT 84654</p>	<p>4. Article Number</p> <p>P 074 977 273</p> <p>Type of Service:</p> <p><input type="checkbox"/> Registered                      <input type="checkbox"/> Insured  <input checked="" type="checkbox"/> Certified                              <input type="checkbox"/> COD  <input type="checkbox"/> Express Mail                      <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature - Address</p> <p>X <i>[Signature]</i></p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
<p>6. Signature - Agent</p> <p>X</p>	
<p>7. Date of Delivery</p> <p>11/21/97</p>	

PS Form 3811, Mar. 1988 \* U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT



\_\_\_\_\_ DIVISION OF OIL GAS & MINING  
 \_\_\_\_\_ 1594 W NO TEMPLE STE 1210  
 \_\_\_\_\_ PO BOX 145801  
 \_\_\_\_\_ SLC UT 84114

Print Sender's name, address, and ZIP Code in the space below.

RETURN TO

**SENDER INSTRUCTIONS**

- Print your name, address and ZIP Code in the space below.
- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

UNITED STATES POSTAL SERVICE OFFICIAL BUSINESS



PENALTY FOR PRIVATE USE, \$300



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

1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801  
801-538-5340  
801-359-3940 (Fax)  
801-538-7223 (TDD)

November 19, 1997

CERTIFIED RETURN RECEIPT

P 074 977 273

Ken May, General Manager  
Canyon Fuel Company, LLC  
SUFCO Mine  
397 South 800 West  
Salina, Utah 84654

Re: Proposed Assessment for State Violation No. N-97-46-4-3, Canyon Fuel Company, SUFCO Mine, ACT/041/002, Folder #5, Sevier County, Utah

Dear Mr. May:

The undersigned has been appointed by the Division 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 Peter Hess on October 17, 1997. Rule R645-401-600 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 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:

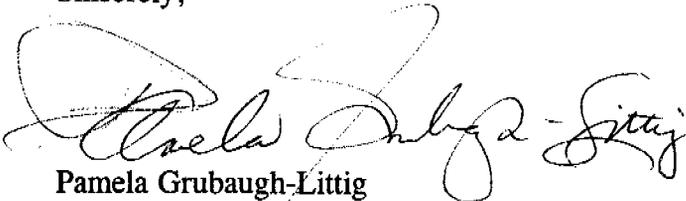
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding 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

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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,



Pamela Grubaugh-Littig  
Assessment Officer

b1b  
Enclosure  
cc: James Fulton, OSM  
Vicki Bailey, DOGM  
O:\041002.CON\ASSESMNT\9746-4-3.LTR

WORKSHEET FOR ASSESSMENT OF PENALTIES  
DIVISION OF OIL, GAS, & MINING

COMPANY/MINE Canyon Fuel Company, LLC/SUFCO Mine NOV# N-97-46-4-3

PERMIT ACT/041/002 VIOLATION 1 OF 3

ASSESSMENT DATE 11/05/97 ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY MAX 25 POINTS

A. Are there previous violations, which are not pending or vacated, which fall within 1 year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
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\_\_\_\_\_

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 apply:

- Based on facts supplied by the inspector, the Assessment Officer will determine within each category the violation falls.
- Beginning at the mid-point of the category, the Assessment Officer will adjust the point 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 VIOLATION MAX 45 POINTS

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

Damage to property and Environmental harm (failure to maintain diversions).

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

Occurred

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

Lack of maintenance on diversions caused erosion on the cut back slope and uncontrolled flow out of the designed channel.

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 5**

**PROVIDE AN EXPLANATION OF POINTS:**

Damage was not considered severe where pipe blocked and silted in ditch MSH-2.

**B. HINDRANCE VIOLATION MAX 25 POINTS**

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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

**TOTAL SERIOUSNESS POINTS (A OR B) 25**

III. NEGLIGENCE MAX 30 POINTS

- 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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 15

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee was advised during the August inspection of the need to check all site diversions due to "El Nino". Diversion MSH-2 was specifically pointed out on the August 18th inspection.

IV. GOOD FAITH MAX 20 POINTS

(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

(Operator complied within the abatement period required)

(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 the 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?

IN SO--DIFFICULT ABATEMENT

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 of the plan submitted for abatement was incomplete)

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

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS -8

**PROVIDE AN EXPLANATION OF POINTS:**

Abatement was scheduled for November 15, 1997, and was terminated to prior to that date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION N-97-46-4-3

I. TOTAL HISTORY POINTS: 0

II. TOTAL SERIOUSNESS POINTS: 25

III. TOTAL NEGLIGENCE POINTS: 15

IV. TOTAL GOOD FAITH POINTS: -8

TOTAL ASSESSED POINTS: 40

**TOTAL ASSESSED FINE: \$440.00**



2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

Occurred

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

Sheet flow off DIS-1 eroded cut bank where soil is unprotected. Undisturbed flow behind "covered storage" building is eroding cut bank.

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 10**

**PROVIDE AN EXPLANATION OF POINTS:**

Banks showed extensive erosion.

**B. HINDRANCE VIOLATION MAX 25 POINTS**

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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

**TOTAL SERIOUSNESS POINTS (A OR B) 30**

III. NEGLIGENCE MAX 30 POINTS

- 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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 10

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee had been advised of potential and had sufficient time to address this situation.

IV. GOOD FAITH MAX 20 POINTS

(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

(Operator complied within the abatement period required)

(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 the 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?

IN SO--DIFFICULT ABATEMENT  
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 of the plan submitted for abatement was incomplete)

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

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

This violation has not been terminated to date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION	<u>N-97-46-4-3</u>
I. TOTAL HISTORY POINTS:	<u>0</u>
II. TOTAL SERIOUSNESS POINTS:	<u>30</u>
III. TOTAL NEGLIGENCE POINTS:	<u>10</u>
IV. TOTAL GOOD FAITH POINTS:	<u>0</u>
TOTAL ASSESSED POINTS:	<u>40</u>
TOTAL ASSESSED FINE:	<u>\$600.00</u>



PROBABILITY

RANGE

None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 0**

**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 0**

**PROVIDE AN EXPLANATION OF POINTS:**

**B. HINDRANCE VIOLATION MAX 25 POINTS**

1. Is this a potential or actual hindrance to enforcement? Actual  
RANGE 0-25

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

**ASSIGN HINDRANCE POINTS 10**

**PROVIDE AN EXPLANATION OF POINTS:**

The inspection of the diversion that was out of compliance was not identified on the map. This diversion had uncontrolled drainage.

**TOTAL SERIOUSNESS POINTS (A OR B) 10**

**III. NEGLIGENCE MAX 30 POINTS**

- 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--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

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

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 10

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee is aware of the requirement to identify diversions in the mining plan.

**IV. GOOD FAITH MAX 20 POINTS**

(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

(Operator complied within the abatement period required)

(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 the 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?

IN SO--DIFFICULT ABATEMENT

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 of the plan submitted for abatement was incomplete)

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

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

The permittee has not submitted the required information to date.

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION	<u>N-97-46-4-3</u>
I. TOTAL HISTORY POINTS:	<u>0</u>
II. TOTAL SERIOUSNESS POINTS:	<u>10</u>
III. TOTAL NEGLIGENCE POINTS:	<u>10</u>
IV. TOTAL GOOD FAITH POINTS:	<u>0</u>
TOTAL ASSESSED POINTS:	<u>20</u>
<b>TOTAL ASSESSED FINE:</b>	<b><u>\$200.00</u></b>