



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

December 15, 2005

CERTIFIED RETURN RECEIPT
7002 0510 0003 8602 8468

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

Subject: Proposed Assessment for State Violation No. N05-53-1-1, Canyon Fuel Company, LLC, SUFCO Mine, C/041/0002, Outgoing File

Dear Mr. May:

The undersigned has been appointed by the Division of Oil, Gas & 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, Steven Fluke, on November 14, 2005 and terminated on December 14, 2005. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalty. By these rules, any written information that was submitted by you or your agent within fifteen (15) days of receipt of this 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 thirty (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 thirty (30) days of receipt of this letter. If 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.

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December 16, 2005

If a timely request for review is not made, the fact of violation will stand, the proposed penalty will become final, and the penalty will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,

D. Wayne Hedberg
Assessment Officer

Enclosure

cc: OSM Compliance Report
Vickie Southwick, DOGM
Jeff Studenka, DWQ
Price Field Office

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

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

ASSIGN PROBABILITY OF OCCURRENCE POINTS 17

PROVIDE AN EXPLANATION OF POINTS:

******Black water (containing coal fines) was released into the North Fork of Quitchupah Creek presumably from UPDES outfall 003A at the SUFCO underground mine. Although no one directly witnessed the contaminated discharge from outfall 003A, downstream impacts to the creek outside of the permit area were observed and anonymously reported to the Division of Water Quality (DWQ) on October 5, 2005. A water quality sample was taken 5-6 miles downstream from outfall 003A on October 5th by a DWQ inspector. This sample confirmed that suspended solid (coal fines) contamination was evident and exceeded the established Total Suspended Solids (TSS) discharge limit of 70 mg/l (max daily average) for outfall 003A (UPDES Permit No. UT0022918) and the receiving stream (NF Quitchupah Creek - Class 3A cold water aquatic wildlife). The sampled stream flow TSS measurement was 458.7 mg/l. On October 13, 2005, a subsequent NF Quitchupah stream channel inspection was performed by DOGM & DWQ staff. Visual confirmation of contamination was noted due to residual water discoloration and some settled coal fines along the stream edges. Another water quality sample was taken. The sample yielded a TSS measurement of 49.2 mg/l.***

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:

******The extent and duration of the high TSS discharge is unknown. The average discharge rate from outfall 003 is approximately 3000 gpm. The assessed impact from the slug of contaminated water that passed down Quitchupah Creek is difficult to measure. No reports or measurements of actual offsite damage or environmental harm have been determined or reported. Based upon the extent of available information, the offsite impact(s) to the environment and downstream water users is believed to be of minor consequence.***

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA
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) 27

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation that 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 No Negligence

ASSIGN NEGLIGENCE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

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

C Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)

- C Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- C Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition 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?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- C Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- C Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- C 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? B – Difficult Abatement

ASSIGN GOOD FAITH POINTS -15

PROVIDE AN EXPLANATION OF POINTS:

******Immediately upon receipt of notification that Quitchupah Creek had a contamination problem, the operator took immediate steps to determine if the mine was the source of the problem. Supplemental water quality samples were immediately taken from the discharge location (UPDES outfall - 003). Discharge records were rechecked and a complete assessment of the underground mine water routing, containment & treatment systems was undertaken by mine personnel to determine a possible cause or source of the problem. Once this information was assessed, the operator met with appropriate regulatory agency personnel at the mine to discuss their findings and provide first hand knowledge of the water handling systems with an underground tour. A November 16, 2005 letter, containing a written explanation of their investigation and findings was prepared by the operator and forwarded to DWQ and DOGM (DOGM received 11/21/05). Remediation plans were also outlined and actions taken to minimize the likelihood of a similar occurrence in the future.***

V. **ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # <u>N05-53-1-1</u>	
I.	TOTAL HISTORY POINTS <u>0</u>
II.	TOTAL SERIOUSNESS POINTS <u>27</u>
III.	TOTAL NEGLIGENCE POINTS <u>0</u>
IV.	TOTAL GOOD FAITH POINTS <u>-15</u>
	TOTAL ASSESSED POINTS <u>12</u>
	TOTAL ASSESSED FINE <u>\$264</u>