

BEFORE THE DIVISION OF OIL GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE APPEAL OF FACT OF VIOLATION N95-39-1-2, WHITE OAK MINING AND CONSTRUCTION COMPANY	: :	FINDINGS, CONCLUSIONS AND ORDER CAUSE NO. ACT/007/001
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On April 25, 1995, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation and the assessment of penalties issued to White Oak Mining and Construction Company for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding: Jim Carter
Director

Petitioner: Denise Dragoo,
Steve Tanner

Division: Joe Helfrich
Steve Demczak

The Findings, Conclusions and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing, and on information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.
2. The Assessment Conference, to review the proposed penalties for NOV N95-39-1-2 was held immediately following this informal hearing regarding fact of violation. The requirement to pay the assessed penalty is stayed pending

this decision upon the informal review of fact of violation and assessment of penalties.

3. Part 1 of 2 of the violation was written for "Failure to place and store non-coal waste in a controlled manner in a designated portion of the permit area." The petitioner did not contest the fact that non-coal waste was improperly placed, but offered mitigating circumstances in that the violation was abated the same day it was cited.

4. Part 2 of 2 of the violation was written for "Failure to maintain D7-B [a diversion ditch] and having snow from pad area in D18-A [another diversion ditch] and equipment within D18-A. The petitioner did not contest the fact of this part of the violation, but also offered the mitigation that the violation was abated the same day it was written.

CONCLUSIONS OF LAW

1. The events confirmed at the informal conference constitute violations of the Utah regulatory program.

2. Abatement of both violations was easy abatement which was completed immediately following issuance of the violations, and the petitioner is entitled to 15 good faith points on each part of the violation.

ORDER

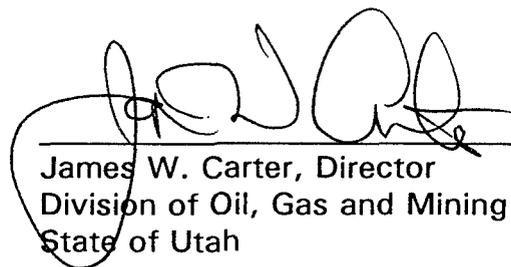
NOW THEREFORE, it is ordered that:

1. NOV N95-39-1-2 parts 1 and 2 are upheld.

2. The finalized assessments, as adjusted for good faith points as provided herein, is due and payable to the Division 30 days from the date of this Order.

3. The Petitioner may appeal the determinations of fact of violation and/or the finalized assessments to the Board of Oil, Gas and Mining by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements, including placing the assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 27 day of April, 1995.



James W. Carter, Director
Division of Oil, Gas and Mining
State of Utah

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS, CONCLUSIONS AND ORDER for Cause No. ACT/007/001 to be mailed first class, postage prepaid, on the 2 day of May, 1995, to the following:

Denise Dragoo, Esq.
Fabian & Clendenin
215 South State Street
P.O. Box 510210
Salt Lake City, Utah 84151

Steve Tanner
White Oak Mining & Construction
Scofield Route
Helper, Utah 84526



COMPANY/MINE WHITE OAK MINING & CONT.
NOV/CO # 95-39-1-2

PERMIT # ACT\007\001 VIOLATION # 1 OF 2

EVENT VIOLATIONS INSPECTOR'S STATEMENT

A. SERIOUSNESS

1. What harmful event was this regulation designed to prevent? Refer to the DOGM reference list of events below and remember that the event is not the same as the violation. Check and explain each event.

- a. Activity outside the approved permit area.
- b. Injury to the public (public safety).
- c. Damage to property.
- d. Conducting activities without appropriate approvals.
- e. Environmental harm.
- f. Water pollution.
- g. Loss of reclamation/revegetation potential.
- h. Reduced establishment of a permanent, diverse and effective vegetative cover.
- i. Other.

Non-coal waste was found throughtout the property (oil cans, trash, brattice, wood).

2. Has the event occurred? Yes x No _____

If yes, describe it. If no, what would cause it to occur and how likely is it that it would happen?

The non-coal waste is not being properly stored as required by R645 regulation.

3. Would and/or does damage extend off the disturbed and/or permit area?

DISTURBED AREA

PERMIT AREA

Would: Yes ___ No x
Does: Yes ___ No x

Would: Yes ___ No x
Does: Yes ___ No x

4. Describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not damage would extend off the disturbed and/or permit area.

No damage has yet taken place but the materials are being improperly stored. Damage to the disturbed area is possible if oil cans begin to leak.

Potential damage off the disturbed area. Yes x No ___

Potential damage off the permit area. Yes ___ No x

B. DEGREE OF FAULT (Only one question applies to each violation; check one and discuss.

(___) No Negligence

If you think this violation was not the fault of the operator (due to vandalism or an act of God), explain. Remember the permittee is considered responsible for actions of all persons working on the mine site.

(x) Ordinary Negligence

If you think this violation was the result of not knowing about DOGM regulations, indifference to DOGM regulations or the lack of diligence or reasonable care. Explain.

White Oak Mining has previously received violations of non-coal waste materials improperly stored. In my judgement a lack of reasonable care and training of personnel are the cause of this violation.

(___) Recklessness

If the actual or potential environmental harm or harm to the public should have been evident to an operator, describe the situation and what if anything, the operator did to correct it prior to being cited.

(___) Knowing and Willful Conduct

Was the operator in violation of a specific permit condition? Did the operator receive prior warning of noncompliance by State or Federal inspectors concerning this violation? Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give dates) and describe the measures the operator took to comply as rapidly as possible.

No good faith points should be given because this has occurred previously. The company has apparently failed to train personnel on this matter and/or is indifferent to it. Abatement is 20 min. max.

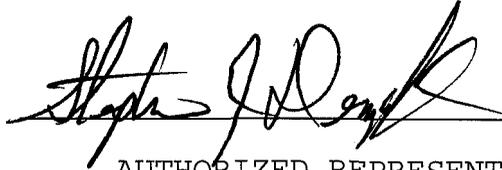
2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Yes, one person of average physical condition.

3. Was the submission of plans prior to physical activity required by this NOV? Yes No

2/10/95

DATE



AUTHORIZED REPRESENTATIVE

COMPANY/MINE WHITE OAK MINING NOV/CO # 95-39-1-2

PERMIT # ACT\007\001 VIOLATION # 2 OF 2

EVENT VIOLATIONS INSPECTOR'S STATEMENT

A. SERIOUSNESS

1. What harmful event was this regulation designed to prevent? Refer to the DOGM reference list of events below and remember that the event is not the same as the violation. Check and explain each event.

- a. Activity outside the approved permit area.
- b. Injury to the public (public safety).
- c. Damage to property.
- d. Conducting activities without appropriate approvals.
- e. Environmental harm.
- f. Water pollution.
- g. Loss of reclamation/revegetation potential.
- h. Reduced establishment of a permanent, diverse and effective vegetative cover.
- i. Other.

Two diversions were not functioning as designed within the mine plan. One diversion was filled with sediment and the other with equipment and snow from pad area.

2. Has the event occurred? Yes x No

If yes, describe it. If no, what would cause it to occur and how likely is it that it would happen?

The water from the diversion would flow in an uncontrolled manner onto a primary road used for coal haul trucks (diversion d7-b).

Run-off from Diversion d18-a could flow onto the railroad track in an uncontrolled manner.

3. Would and/or does damage extend off the disturbed and/or permit area?

The diversion d18-a could have some impact on the railroad tracks. (minor)

DISTURBED AREA

Would: Yes No x
Does: Yes No x

PERMIT AREA

Would: Yes x No
Does: Yes No x

4. Describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not damage would extend off the disturbed and/or permit area.

No damage has presently occurred to the permit area.

Potential damage off the disturbed area. Yes ___ No x

Potential damage off the permit area. Yes x No ___

- B. DEGREE OF FAULT (Only one question applies to each violation; check one and discuss.

(___) No Negligence

If you think this violation was not the fault of the operator (due to vandalism or an act of God), explain. Remember the permittee is considered responsible for actions of all persons working on the mine site.

(x) Ordinary Negligence

If you think this violation was the result of not knowing about DOGM regulations, indifference to DOGM regulations or the lack of diligence or reasonable care. Explain.

The violation was primarily caused by lack of employee training and/or lack of reasonable care from management.

(___) Recklessness

If the actual or potential environmental harm or harm to the public should have been evident to an operator, describe the situation and what if anything, the operator did to correct it prior to being cited.

(___) Knowing and Willful Conduct

Was the operator in violation of a specific permit condition? Did the operator receive prior warning of noncompliance by State or Federal inspectors concerning this violation? Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give dates) and describe the measures the operator took to comply as rapidly as possible.

Yes, good faith points could be given if abatement occurred quickly.

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Yes, necessary equipment was on site.

3. Was the submission of plans prior to physical activity required by this NOV? Yes ___ No x

2/10/95

DATE



AUTHORIZED REPRESENTATIVE