

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 : FINDINGS, CONCLUSIONS
OF FACT OF VIOLATION N95-32-3-2, AND ORDER
WHITE OAK MINING AND :
CONSTRUCTION, INC., WHITE OAK :
MINE : CAUSE NO. ACT/007/001

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On August 4, 1995, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to White Oak Mining and Construction for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding: James W. Carter
Director

Petitioner: Steven Tanner
Denise Dragoo, Esq.

Division: Joe Helfrich
Henry Sauer

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 N95-32-3-2, 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.

3. Violation N95-32-3-2 part 1 of 2 was written for "failure to comply with the terms and conditions of the approved permit and all applicable performance standards and requirements of the state program. Failure to submit to the Division of Oil, Gas and Mining discharge monitoring reports for January, February and March, 1995 for UPDES outfalls at the White Oak complex, ACT/007/001." The permit provides; "As requested, UPDES reporting will continue to be copied and submitted to UDOGM on a monthly basis as defined in the permit for the Utah Department of Health." R645-301-731.223 provides; "Surface-water monitoring data will be submitted at least every three months for each monitoring location."

4. Violation N95-32-3-2 was issued on July 12, 1995, with an abatement date for part 1 of 2 of July 24, 1995, a legal state holiday. The information required had not been submitted by the close of business on July 25, 1995, so a Failure to Abate Cessation Order ("FTACO") was issued on July 26, 1995. The information required was received at the Division offices on July 26, 1995, after issuance, but before receipt by White Oak, of the FTACO.

5. Violation N95-32-3-2, part 2 of 2 was issued for "failure to demonstrate compliance with R645-301-526, et seq. and R645-301-536, et seq." The cited rules require engineering design and certification of coal mine waste disposal facilities and related facilities. On September 27, 1994, the Division approved a "temporary coal mine waste storage area" for the area in question, requiring submittal of as-built drawings

upon completion of construction. Division files contain an Addendum dated September 6, 1994, submitted by White Oak, briefly describing the activities to take place in the temporary storage area. No as-built drawings appear in Division files.

6. The inspection report for part 2 of 2 states that "the material [in the storage area] has slumped . . . [and] has not been adequately compacted nor has the surface been stabilized. A 'permanent' disposal location has not been identified." The inspector testified that the use of and materials located in the temporary storage area are not clearly identified in the permit, and that the difference between "temporary" and "permanent" storage is not defined in the permit. The temporary storage area is served by adequate sediment controls and no impacts have escaped the controls. The permittee testified that current operations within the temporary storage area had been approved verbally by Division personnel as part of the September 27 approval.

CONCLUSIONS OF LAW

1. The permittee is required, both by the terms of the permit and the program rules, to submit UPDES water monitoring information directly to the Division on an at least quarterly basis.

2. The uses by the permittee of the "temporary storage area" are neither clearly outside the ambit of the Division's September 27, 1995, approval, nor necessarily outside the performance standards of the Utah program. Permanent disposal of coal mine waste or sediment pond cleanout material, without prior engineering design and approval, are outside the requirements of the Utah program. While the permit lacks information on permanent disposal of coal mine waste, the permittee's activities in the

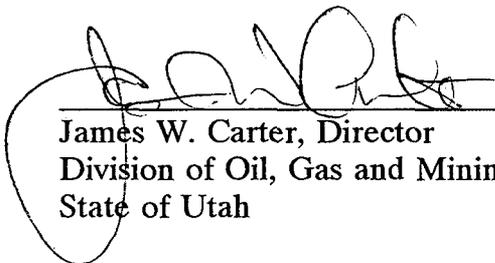
"temporary storage area" do not yet constitute a violation of either the permit terms or the Utah program performance standards.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N95-32-3-2 part 1 of 2 is upheld.
2. NOV N95-32-3-2 part 2 of 2 is vacated.
3. The Petitioner may appeal the determinations of fact of violation 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 9th day of August, 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 postage prepaid, on the 10 day of August, 1995, to the following:

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