

### Document Information Form

Mine Number: C/007/004

File Name: Internal

To: DOGM

From:

Person N/A

Company N/A

Date Sent: N/A

Explanation:

PETITION FOR REVIEW

---

---

cc:

File in: C/007/004, Internal

- Refer to:
- Confidential
  - Shelf
  - Expandable

Date \_\_\_\_\_ For additional information

407/007/004 - N.J.V.

PETITION FOR REVIEW--Payment of proposed assessment not necessary where case settled  
SETTLEMENTS--Agreement construed by ALJ as including cessation order

"No money was paid into escrow."

"After the matter was called for hearing counsel for each of the parties made motions for summary disposition of the proceeding...[OSM's] motion to dismiss is based on the failure to pay \$750, the amount of the proposed assessment based on failure to abate, for one day, Notice of Violation No. 79-I-36-2."

"In a proceeding on Notice of Violation No. 79-I-36-2 under Docket No. CHO-120-P a Consent Decision was entered on November 20, 1980, which Consent Decision incorporated the Joint Motion for Consent Decision which admitted the notice of violation and reduced the penalty assessment for the violation from \$1,200 to \$500 with \$700 to be returned."

"It became apparent to the undersigned after listening to statements and arguments of counsels [sic]...that it was the intention of the petitioner that the entire proceeding based upon Notice of Violation No. 79-I-36-2, including the cessation order, was to be resolved by the Consent Decision and the agreed-upon fine imposed thereby."

"I find it very unlikely that the petitioner had any intention to settle this case in 'pieces.'"

Held: Cessation Order 79-I-36-1 is affirmed, but "the proposed assessment in this proceeding of \$750 for failure to abate...was merged in the Consent Decision dated November 20, 1980, in Docket No. CHO-120-P and...no additional penalty is due and owing from the petitioner."

25 ALJ

PRICE RIVER COAL COMPANY v. OSM, No. DVO-9-P. Judge Mesch. June 3, 1981. Petition for Review of Proposed Civil Penalty Assessment for Notices of Violation Nos. 79-5-5-30, 79-5-5-31 and 79-5-5-33.

CIVIL PENALTIES--Penalties reduced by ALJ--Penalties increased by ALJ--30 CFR 723.13 (b) (2)(i)--Probability of occurrence discussed--30 CFR 723.13(b)(2)(ii)--Extent of damage discussed--30 CFR 723.13(b)(2)(iii)--Obstruction to enforcement discussed--30 CFR 723.13(b)(3)--Negligence discussed

SEDIMENTATION PONDS--30 CFR 717.17(a)--Civil penalties  
TOPSOIL HANDLING--30 CFR 717.20--Civil penalties  
SURFACE WATER MONITORING--30 CFR 717.17(b)--Civil penalties  
GROUND WATER--30 CFR 717.17(h)--Civil penalties  
DISPOSAL OF EXCESS SPOIL--30 CFR 715.15--Civil penalties

"Violation No. 1 of Notice of Violation No. 79-5-5-30 charges a violation of 30 CFR 717.17(a) in that the petitioner failed to pass surface drainage from disturbed areas around its preparation plant facilities through sedimentation ponds. The petitioner does not contest the fact of violation, but only the amount of the penalty assessed by OSM, i.e., \$1,200."

"Violation No. 1 of Notice of Violation No. 79-5-5-31 charges a violation of 30 CFR 717.17(a) in that the petitioner failed to pass surface drainage from a disturbed area at its Hardscrabble Canyon facilities through a sedimentation pond. The petitioner does not contest the fact of violation, but only the amount of the penalty assessed by OSM, i.e., \$1,200."

File in:  
 Confidential  
 Shelf  
 Expandable  
Refer to Record No. 0005 Date \_\_\_\_\_  
In C/ 007, 004, Internal \_\_\_\_\_  
For additional information \_\_\_\_\_

AOT/07/004 - N.J.V.

PETITION FOR REVIEW--Payment of proposed assessment not necessary where case settled  
SETTLEMENTS--Agreement construed by ALJ as including cessation order

"No money was paid into escrow."

"After the matter was called for hearing counsel for each of the parties made motions for summary disposition of the proceeding...[OSM's] motion to dismiss is based on the failure to pay \$750, the amount of the proposed assessment based on failure to abate, for one day, Notice of Violation No. 79-I-36-2."

"In a proceeding on Notice of Violation No. 79-I-36-2 under Docket No. CHO-120-P a Consent Decision was entered on November 20, 1980, which Consent Decision incorporated the Joint Motion for Consent Decision which admitted the notice of violation and reduced the penalty assessment for the violation from \$1,200 to \$500 with \$700 to be returned."

"It became apparent to the undersigned after listening to statements and arguments of counsels [sic]...that it was the intention of the petitioner that the entire proceeding based upon Notice of Violation No. 79-I-36-2, including the cessation order, was to be resolved by the Consent Decision and the agreed-upon fine imposed thereby."

"I find it very unlikely that the petitioner had any intention to settle this case in 'pieces.'"

Held: Cessation Order 79-I-36-1 is affirmed, but "the proposed assessment in this proceeding of \$750 for failure to abate...was merged in the Consent Decision dated November 20, 1980, in Docket No. CHO-120-P and...no additional penalty is due and owing from the petitioner."

25 ALJ

PRICE RIVER COAL COMPANY v. OSM, No. DVO-9-P. Judge Mesch. June 3, 1981. Petition for Review of Proposed Civil Penalty Assessment for Notices of Violation Nos. 79-5-5-30, 79-5-5-31 and 79-5-5-33.

CIVIL PENALTIES--Penalties reduced by ALJ--Penalties increased by ALJ--30 CFR 723.13 (b) (2)(i)--Probability of occurrence discussed--30 CFR 723.13(b)(2)(ii)--Extent of damage discussed--30 CFR 723.13(b)(2)(iii)--Obstruction to enforcement discussed--30 CFR 723.13(b)(3)--Negligence discussed

SEDIMENTATION PONDS--30 CFR 717.17(a)--Civil penalties

TOPSOIL HANDLING--30 CFR 717.20--Civil penalties

SURFACE WATER MONITORING--30 CFR 717.17(b)--Civil penalties

GROUND WATER--30 CFR 717.17(h)--Civil penalties

DISPOSAL OF EXCESS SPOIL--30 CFR 715.15--Civil penalties

"Violation No. 1 of Notice of Violation No. 79-5-5-30 charges a violation of 30 CFR 717.17(a) in that the petitioner failed to pass surface drainage from disturbed areas around its preparation plant facilities through sedimentation ponds. The petitioner does not contest the fact of violation, but only the amount of the penalty assessed by OSM, i.e., \$1,200."

"Violation No. 1 of Notice of Violation No. 79-5-5-31 charges a violation of 30 CFR 717.17(a) in that the petitioner failed to pass surface drainage from a disturbed area at its Hardscrabble Canyon facilities through a sedimentation pond. The petitioner does not contest the fact of violation, but only the amount of the penalty assessed by OSM, i.e., \$1,200."

Violated  
"Violation No. 2 of Notice of Violation No. 79-5-5-33 charges a violation of 30 CFR 717.20 in that the petitioner failed to remove, segregate, stockpile, and protect topsoil or selected overburden from a refuse disposal site in Schoolhouse Canyon. The petitioner contests the fact of violation and the amount of the penalty assessed by OSM, i.e., \$1,400."

"Violation No. 3 of Notice of Violation No. 79-5-5-33 charges a violation of 30 CFR 717.17 in that the petitioner failed to have an approved ground water monitoring plan. The petitioner contests the fact of violation and the amount of the penalty assessed by OSM, i.e., \$400."

"Violation No. 4 of Notice of Violation No. 79-5-5-33 charges a violation of 30 CFR 717.17 in that the petitioner failed to have an approved surface water monitoring plan. The petitioner contests the fact of violation and the amount of the penalty assessed by OSM, i.e., \$400."

"Violation No. 5 of Notice of Violation No. 79-5-5-33 charges a violation of 30 CFR 715.15 in that the petitioner failed to dispose of refuse in an area approved by the regulatory authority...The petitioner contests the fact of violation and the amount of the penalty assessed by OSM, i.e., \$1,400."

Held: Violation No. 1 of NOV 79-5-5-30, Violation No. 1 of NOV 79-5-50-31, and Violations 2,3,4, and 5 of NOV 79-5-5-33 are affirmed. The civil penalties thereon are reduced from \$6,000 to \$3,180.

"[NOV 79-5-5-20:] The evidence establishes that during periods of runoff, sediments might be carried from the affected areas into the Price River. The evidence does not establish that sediments had been carried from the affected areas into the Price River. The probability of the occurrence of the event which the violated standard was designed to prevent was likely to occur. Accordingly, 12 points, the medium number specified by 30 CFR 723.13(b)(2)(i), are assigned for this factor."

"The evidence establishes that the damage or impact which the violated standard was designed to prevent would extend outside the permit area. There is no evidence to support any reasonable conclusion as to the duration and extent of the damage or impact. Accordingly, 8 points, the minimum number specified by 30 CFR 723.13(b)(2)(ii)(B), are assigned for this factor."

"The petitioner was negligent in not meeting the requirement of the regulation...As a result, 6 points, the medium number specified by 30 CFR 723.13(b)(3)(i)(B), are assigned for this factor."

"[NOV 79-5-5-31:] The evidence establishes that during periods of runoff, sediments had been carried from the affected area to Hardscrabble Canyon, which is an ephemeral drainage. Hardscrabble Canyon enters the Price River...The probability of the occurrence of the event which the violated standard was designed to prevent had occurred. Accordingly, 15 points must be assigned...."

"The evidence establishes that the damage or impact which the violated standard was designed to prevent would extend outside the permit area. There is no evidence to support any reasonable conclusion as to the duration and extent of the damage or impact. Accordingly, 8 points, the minimum number specified by the point system, are assigned for this factor."

"Again, the petitioner was negligent in not meeting the requirement of the regulation. Accordingly, 6 points, the medium number specified by the point system, are assigned for this factor."

"[NOV 79-5-5-33(2):] The evidence establishes that the petitioner did not remove, segregate,

gate, and save any topsoil or selected overburden material when it constructed the disposal site. The petitioner takes the position that the soil was contaminated with coal and other debris from previous operations and it elected to buy topsoil at a late date to distribute over and regrade the area rather than use the existing soil. The petitioner should have sought approval from OSM before electing to leave the topsoil in place and covering it with refuse and waste. I find that a violation did, in fact occur."

"The inspector testified that (1) no harm would result from the violated standard if the petitioner later obtained topsoil to distribute over the area...and (2) if the petitioner did not...distribute topsoil over the area, then OSM would either cite it for a violation of the same regulation or refuse to release its bond on the permit area. Under the circumstances, no points are assessed for the probability of occurrence factor or the extent of potential or actual damage factor."

"The fact that the petitioner did not attempt to seek approval from OSM for its election to cover the existing topsoil makes it impossible for OSM to enforce the pertinent portion of the regulation inasmuch as the evidence, i.e., the alleged contaminated topsoil is covered by waste or refuse. Accordingly, 15 points, the maximum number specified in 30 CFR 723.13(b)(2)(iii) for seriousness, based upon the extent to which enforcement is obstructed by the violation, are assigned."

"The petitioner was negligent in not meeting the requirement of the regulation. Accordingly, 6 points, the medium number specified by the point system, are assigned for this factor."

"[NOV 79-5-5-33(3):] The fact that such a [ground water monitoring] plan had been submitted to the United States Geological Survey...by the petitioner does not establish compliance with the OSM regulations. I find that a violation did, in fact, occur."

"The factor relating to the extent to which enforcement was obstructed by the violation is applicable. A failure to submit a water monitoring plan makes it difficult to enforce the provisions of the law relating to the prevention of water pollution. Accordingly, 15 points, the maximum number specified by the point system, are assigned for this factor."

"The petitioner was negligent in not meeting the plain requirement of the regulation. Accordingly, 6 points, the medium number specified by the point system, are assigned for this factor."

"[NOV 79-5-5-33(4):] The fact that such a [surface water monitoring] plan had been submitted to the United States Geological Survey...by the petitioner does not establish compliance with the OSM regulations. I find that a violation did, in fact, occur."

"The same findings are made and the same points are assigned as in the previous violation."

"[NOV 79-5-5-33(5): MSHA approval is not adequate.] I find that a violation did...occur because the petitioner was disposing of excess materials without any plan having been submitted to or approved by the regulatory authority."

"The probability of occurrence factor and the extent of potential or actual damage factor cannot be assessed and are not applicable. The alternative factor relating to the extent to which enforcement was obstructed by the violation can be assessed; and 15 points, the maximum number specified by the point system, are assigned for this factor."

"The petitioner was negligent in not meeting the requirement of the regulation. Accordingly, 6 points, the medium number specified by the point system, are assigned for this factor."