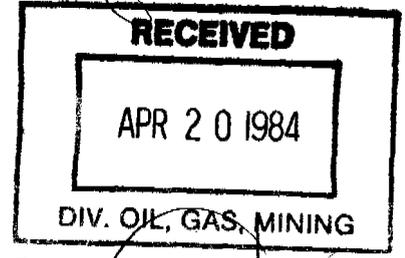


Jerry Ann Knight
Jim Smith

JIM

APR 30 1984



BEFORE THE BOARD OF OIL, GAS AND MINING,
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

file ACT/007/004
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cc: Joe

In the Matter of the)
Petition of Price River)
Coal Company for Review and)
Hearing on Notice of Viola-)
tion No. N83-2-15-1)

PETITION

Docket No. _____

Cause No. _____

Pursuant to Sections 40-10-20(2) and 40-10-22(3)(a) Utah Code Ann. (1953), as amended, and UMC 845.19(a) of the Utah Coal Mining and Reclamation Permanent Program, Price River Coal Company ("Petitioner"), by and through its undersigned attorney, hereby files this Petition for review and request for hearing before the Board of Oil, Gas and Mining ("Board") on Notice of Violation No. N83-2-15-1 ("Notice"), issued to Petitioner by the Division of Oil, Gas and Mining ("Division"). A copy of the Notice is attached hereto as Exhibit "A". By this Petition, Petitioner contests the fact of the Violation cited in the Notice and the amount of the penalty points and monetary penalty assigned and assessed in connection therewith.

In support of this Petition, Petitioner alleges as follows:

1. Petitioner operates an underground coal mining operation (ACT/007/004) comprised of several distinct mine

sites located in Townships 12 and 13 South and Ranges 8, 9 and 10 East, Salt Lake Base and Meridian, Carbon County, Utah.

2. The Notice was issued on November 3, 1983, by Inspector Sandy Pruitt ("Inspector") of the Division following an inspection conducted by her.

3. The Notice cited a single Violation of UMC 817.45 based on an alleged failure to maintain appropriate sediment control measures to prevent to the extent possible additional contributions of sediment to stream flow or runoff outside the permit area.

4. The alleged Violation pertained to specific areas at three of petitioner's mine sites, known as Sowbelly Gulch, Hardscrabble Canyon and Castlegate. These three sites are located at distances ranging from approximately three to nine miles from each other.

5. The Notice required that certain abatement action be performed on or before November 11, 1983. Petitioner commenced the required action on November 4, 1983, and abated the Violation on or before November 8th, 1983 -- within four days after petitioner's receipt of the Notice. Abatement action was accomplished through the use of machinery which had to be refitted and transported from Petitioner's sites in Willow Creek and Crandall Canyon to the areas where abatement

was required. The Notice was officially terminated by the Inspector effective November 8, 1983.

6. The Division assigned 41 penalty points to the Violation and proposed to assess a civil monetary penalty of \$640.00.

7. Pursuant to Petitioner's timely request, an assessment conference was held on March 28, 1984, before Acting Assessment Conference Officer Lorin P. Nielsen. Mr. Nielsen subsequently issued a report dated April 2, 1984, reducing the number of penalty points to 37 and the amount of the civil monetary penalty to \$540.00. A copy of that report, which was received by Petitioner on April 5, 1984, is attached hereto as Exhibit "B". The report sets forth the penalty points assigned for each category both before and after the conference.

8. Petitioner contests the fact of the Violation on the grounds that it did not fail to maintain sediment control structure, but acted reasonably and with diligence in accordance with the requirements of the regulations and Petitioner's maintenance procedures.

9. Petitioner contests the amount of the assessed civil penalty, and specifically contests the number of penalty points assigned for the categories of seriousness, negligence and good faith on the following grounds:

a. Seriousness

Of the 28 points assigned in this category, sixteen were assigned for extent of actual or potential damage. Although damage could have extended off the permit area, no sedimentation outside the permit area, or other damage in fact occurred and any potential damage would have been limited in its impact and extent. No more than eight points should have been assigned for extent of damage.

b. Negligence

Twelve points were assigned in this category. Any problems with sediment control devices were caused by forces outside the control of Petitioner, including actions by persons and wandering livestock not employed or owned by Petitioner. At the time of the inspection, Petitioner was engaged in an extensive and time-consuming seeding program to satisfy other regulatory requirements. Any failure of Petitioner to maintain sediment control devices was inadvertent and not due to any lack of reasonable care. No points should have been assigned for negligence.

c. Good Faith

Following the assessment conference -9 points were assigned for this category. The assessment

officer considered compliance to have been rapid, but considered the situation to be one of "easy" rather than "difficult" abatement. Petitioner contests the assigned points as being insufficient because the abatement was in fact "difficult" within the meaning of UMC 817.13(b)(4), by virtue of the fact that the resources necessary to abate the Violation were neither "on-site" nor "at hand," but were located at sites other than where the abatement was required. Petitioner was required to obtain the necessary resources and equipment from other sites, refit the equipment and then move the equipment between the three distinct mine sites where the abatement was required. As a result, the abatement situation was "difficult" and between -11 to -20 points should have been assigned for Good Faith.

WHEREFORE, Petitioner respectfully requests that this Petition be set for hearing before the Board at its regularly scheduled meeting for the month of June, 1984; that notice of the time, place and purpose of such hearing be given in accordance with applicable laws and regulations; and that upon the conclusion of such hearing, the Board enter an order vacating the Violation cited in the Notice and vacating or reducing the penalty points and monetary penalties as requested

herein; and granting such other further relief as the Board
deems appropriate.

DATED this 20th day of April, 1984.

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DEPARTMENT OF NATURAL RESOURCES - DIVISION OF OIL, GAS, AND MINING
1588 West North Temple - Salt Lake City, Utah 84116 - (801) 633-5771

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STATE OF UTAH

Notice of Violation No. N 12-2-15-1

Violation No. 1 of 1

Nature of the Violation

Failure to maintain appropriate sediment control measures to prevent, to the extent possible, additional contributions of sediment to ~~the area~~ or to runoff outside the permit area.

Provision(s) of the Regulations, Act, or Permit Violated

UAC 812.45
UCA 40-12-18(2)(i)(ii)
UCA 40-12-22(1)(c)

Portion of the Operation to which Notice Applies

the following: 1) Straw bales in road ditch below #3 mine & parking lot, 2) Straw bale barrier between upper spoil storage and disturbed area drainage channel, Southbelle, 3) Berm across Sumner Substation Costlygate, 4) Area between the tank & gas tank beside RR line, 5) Berm north of ~~the tank~~

Remedial Action Required (including interim steps, if any)

1) Maintain straw bales to prevent short circuiting, 2) replace straw bales, 3) Repair berm breach 4) Divert all disturbed area drainage to sediment ponds, 5) Reestablish ~~barrier~~ runoff barrier to prevent drainage off site

Time for Abatement (including time for interim steps, if any)

1/2 later than 8:00 AM, November 11, 1983

ASSESSMENT CONFERENCE REPORT
(continued)

1. Notice of Violation/Cessation Order No. N83-2-15-1

Violation 1 of 1

- (a) Nature of violation: Failure to maintain appropriate sediment control measures to prevent additional contributions of sediment to stream flows as to runoff outside the permit area.
- (b) Date of termination: November 8, 1983

2. Conference Result	<u>Proposed Assessment</u>	<u>Conference Assessment</u>
(a) History/Prev. Vio.	<u>6</u>	<u>6</u>
(b) Seriousness		
(1) Probability of Occurrence	<u>12</u>	<u>12</u>
Extent of Damage	<u>16</u>	<u>16</u>
(2) Obstr. to Enforcement	<u> </u>	<u> </u>
(c) Negligence	<u>12</u>	<u>12</u>
(d) Good Faith	<u>- 5</u>	<u>- 9</u>
(e) Acreage	<u> </u>	<u> </u>
TOTAL	<u>41</u>	<u>37</u>

3. Narrative:
(Brief explanation of reasons for any changes made in assignment of points and any additional information that was presented at the conference.)

History: Points affirmed

Seriousness:

Probability: Event deemed likely to occur based on information presented by Inspector and operator. Proposed assessment reasonable in situation. Points affirmed.

Extent of Damage: Potential damage would extend ^{at} the permit area. Mid point of range appears reasonable. Points affirmed.

Negligence: Normal routine inspection and reasonable care would have revealed problems at 3 of 5 areas in question. 1 of 5 was known and abatement delayed due to other work. The other admitted as lack of diligence. Thus negligence points appear reasonable. Affirmed.

Good Faith: All equipment and personnel used to abate were on-site thus easy abatement situation. Compliance was rapid within 4 days. Points changed to -9.