

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 #N91-18-1-1, AMAX COAL COMPANY, CASTLE GATE MINE, ACT/007/004, CARBON COUNTY, UTAH	: : : : : :	FINDINGS, CONCLUSIONS AND ORDER INFORMAL HEARING CAUSE NO. ACT/007/004
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On October 22, 1991, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation for the above-referenced Notice of Violation ("NOV"). The following individuals attended the hearing:

Presiding: Dianne R. Nielson, Director
Division of Oil, Gas and Mining

Petitioner: Patricia J. Winmill, Esq.
("Amax") Parsons, Behle and Latimer
Counsel for Amax Coal Company

David Hamm
Amax Coal Company

Darlene Murphy
Amax Coal Company

Division: Sharon Falvey
Reclamation Specialist
Issuing Inspector

Daron Haddock
Permit Supervisor

Lowell Braxton
Associate Director, Mining

William Richards, Esq.
Assistant Attorney General

Board: Ron Daniels
Assessment Conference Officer
Penalty Assessment

Joe Helfrich
Assessment Officer
Penalty Assessment

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

FINDINGS OF FACT

1. Notice of this informal hearing was properly given.

2. The Assessment Conference to review the proposed penalty for NOV #N91-18-1-1, was held immediately following this informal hearing regarding fact of violation. Requirement to pay the assessed penalty is stayed pending the decision in the informal review of fact of violation.

3. On January 30, 1991, Amax Coal Company submitted an application for permit transfer from Castle Gate Coal Company for the Castle Gate Mine. On July 2, 1991, the Division issued the permit transfer.

4. A Division Order dated December 18, 1990, in part 24, required that the subject School House Refuse Pile meet the requirements of Utah Admin. R. 614-301-746 and R. 614-301-742.300, including drainage diversion, and safely pass runoff from a 100-year 6-hour event (R. 614-301-745.222). The operator

was ordered to submit the complete permit changes as required on or before June 1, 1991.

5. The requirement for submission of complete permit changes regarding part 24 of the Division Order was not met on or before June 1, 1991.

6. On June 28, 1991, NOV #N91-18-1-1 was issued for failure to pass drainage from the crest and face of the School House Canyon Refuse Pile refuse and fill in accordance with Utah Admin. R. 614-301-742.30, R. 614-301-745.222 and R. 614-301-746.212. The NOV required abatement consisting of 1) securing approval for diversion designs within 30 days and 2) completion of construction within 60 days of NOV issuance.

7. On August 14, 1991, a failure to abate cessation order (FTACO #91-18-1-1) was issued for failure to abate NOV #N91-18-1-1. On October 16, 1991, a complete permit change, as required in part 24 of the Division Order, NOV #91-18-1-1, and FTACO #91-18-1-1 was submitted. This FTACO has not been appealed as part of this matter.

8. Petitioner contends that this was not a "knowing" violation; there were problems with communication; and the Division failed to provide sufficient direction under the NOV.

9. Utah Admin. R. 614-301-742.300 provides direction on construction and operation requirements for diversion ditches.

10. Utah Admin. R. 614-301-745.222 provides direction on runoff and diversion requirements regarding drainage control.

11. Utah Admin. R. 614-301-746.212 provides

requirements for diversion of drainage associated with coal mine waste.

12. Division has documented receipt of incomplete and inconsistent information in submittals from the operator in response to the above-referenced deadlines prior to October 16, 1991.

13. No information was presented by the Petitioner to substantiate contentions in part 7 above, or document the completeness of permit change submittals.

CONCLUSIONS OF LAW

1. Amax Coal Company is the successor in interest to the Castle Gate Coal Mine and bears the responsibilities delineated in Utah Admin. R. 614-303-360.

2. The Division was justified in requiring the operator to make a permit change, as delineated in part 24 of the Division Order. Utah Admin. R. 614-303-212.

3. The School House Refuse Pile was not in compliance with Utah Admin. R. 614-301-742-300, R. 614-301-745.222, and R. 614-301-746.212 when the Division Order, including part 24, was issued; neither was the refuse pile in compliance with the referenced rules when NOV #N91-18-1-1 was issued.

4. Amax failed to provide complete permit changes as required in part 24 of the Division Order and NOV #N91-18-1-1 and in compliance with Utah Admin. R. 614-301-742.300, R. 614-301-745.222, and R. 614-301-746.212.

5. The failure of Amax to timely submit complete permit changes prohibited timely construction to bring the School House Refuse Pile into compliance with Utah Admin. R. 614-301-742.300, R. 614-301-745.222, and R. 614-301-746.212.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV #N91-18-1-1 is upheld.
2. The finalized assessment, resulting from the Assessment Conference of October 22, 1991, is due and payable to the Division 30 days from the date of this Order.
3. The Petitioner may appeal to the Board of Oil, Gas and Mining the informal determination of fact of violation and/or finalized assessment by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements, including placing the assessed penalty in escrow.

SO DETERMINED AND ORDERED this 21st day of November,
1991.


Dianne R. Nielson, Director
Division of Oil, Gas and Mining
State of Utah