

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 OF C91-38-1-1, AMAX COAL COMPANY, CASTLE GATE MINE, CARBON COUNTY, UTAH, ACT/007/004	: : : :	FINDINGS, CONCLUSIONS AND ORDER INFORMAL HEARING CAUSE NO. ACT/007/004
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On February 7, 1992, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation for the above-referenced Failure-to-Abate Cessation Order ("FTACO"). The following individuals attended:

Presiding:	Dianne R. Nielson, Director Division of Oil, Gas and Mining
Petitioner:	Patricia J. Winmill, Esq. Parsons, Behle & Latimer Counsel for Amax Coal Company Richard H. Allison, Jr. Project Supervisor Amax Coal Company Steven R. Laird Manager, Law and Regulatory Affairs Amax Coal Company Mel Coonrod Consultant for Amax Coal Company
Division:	Lowell Braxton Associate Director for Mining Sharon Falvey Reclamation Specialist Issuing Inspector Daron Haddock Permit Supervisor

William R. Richards, Esq.
Assistant Attorney General

Board:

Joe Helfrich
Assessment Officer
Penalty Assessment

Ron Daniels
Assessment Conference Officer
Penalty Assessment

The Findings, Conclusions, and Order in this matter are based on information provided in connection with this informal hearing and 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 FTACO C91-38-1-1, was held in conjunction with 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 December 19, 1990, the Division issued a Notice of Violation (NOV) N90-18-2-1 to Amax Coal Company for failure to provide adequate sedimentation control and failure to demonstrate compliance with regulations Utah Admin. R645(614)-301-732, R645(614)-301-733, R645(614)-301-742, R645(614)-301-743 and R645(614)-301-744 with respect to a number of sedimentation ponds including ponds 008 and 012B.

4. The abatement for NOV N90-18-2-1 included dates for submission of amendments, approval of amendments, and implementation of amendments. The abatement date for implementation was originally set for March 19, 1991. The implementation abatement date was extended at various times and at the request of the operator to accommodate plan approval and construction constraints, with a final implementation abatement date of October 4, 1991. The operator did not request an extension of the October 4, 1991 abatement date.

5. On October 8 and 9, 1991, Sharon Falvey was on the mine site to inspect work required under NOV N90-18-2-1. She noted specific work was not completed on pond 008 and culvert C-9. FTACO C91-38-1-1 was issued on October 10, 1991, and was written for failure to complete work required for abatement of N90-18-2-1. C91-38-1-1 did not reference any problems with pond 012B.

6. On October 11, 1991, the Contractor informed the staff of the Division's Salt Lake City office that the abatement measures specified in C91-38-1-1 were completed. The Contractor and Operator considered that C91-38-1-1 had been abated.

7. On October 16 and 17, 1991, Sharon Falvey was on site to inspect the work required for abatement of C91-38-1-1. She determined that the required abatement measures had not been completed.

8. On October 18, 1991, Contractor contacted Division's Price Field Office to inform them that construction required under C91-38-1-1 was now completed.

9. On October 24, 1991, Division Reclamation Specialists, Randy Harden and Rick Summers, while on the minesite, noted that construction was underway on pond 012B, such that the pond was not in compliance with the approved plan.

10. On the basis of an inspection by Sharon Falvey on October 29, 1991, N90-18-2-1 and C91-38-1-1 were considered terminated, effective October 18, 1991.

11. During the inspection on October 29, 1991, it was also noted that the construction on pond 012B was completed. The as-built plans for pond 012B were received by the Division on December 4, 1991. The as-built plans for pond 012B had not been reviewed at the time of the informal conference.

CONCLUSIONS OF LAW

1. Because construction required under N90-18-2-1 was not completed on or before October 4, 1991, and an extension of the abatement date was not requested, FTACO C91-38-1-1 was properly issued, effective October 10, 1991.

2. The time period on FTACO C91-38-1-1 was halted effective October 11, 1992, based on the call to the Division by the Contractor. The time period on C91-38-1-1 resumed again on October 17, 1991, when the Division determined that C91-38-1-1 had not been abated. The time period was again halted on October 18, 1991, based on the Contractor's call on that date to the Division, stating that the abatement work had been completed.

3. NOV N90-18-2-1 and FTACO C91-38-1-1 were terminated, effective October 18, 1991.

4. The construction, which was underway on pond 012B during the October 24, 1991 minesite visit, was in violation of the approved plan and failed to meet requirements for sediment pond design and construction as required by Utah Admin. R645(614)-301-750 and R645(614)-301-732.

ORDER

NOW THEREFORE, it is ordered that:

1. Fact of Violation in FTACO C91-38-1-1 is upheld. C91-38-1-1 is determined to have been in effect and not abated for a total of 2 days.

2. The finalized assessment of FTACO C91-38-1-1 is due and payable to the Division 30 days from the date of this Order.

3. NOV N92-28-1-1 is issued March 9, 1992 for violation of Utah Admin. R645(614)-301-750 and R645(614)-301-732 for failure to construct and operate in accordance with approved plan and requirements for sediment ponds, with respect to pond 012B, based on the construction which was underway on October 24, 1991.

4. NOV N92-28-1-1 is not abated or terminated at this time because of questions regarding the as-built drawings for pond 012B. Further abatement will be addressed through N92-28-1-1.

5. NOV N92-28-1-1 is not subject to appeal with respect to its issuance in conjunction with this informal hearing and based on the October 24, 1991, pond construction.

SO DETERMINED AND ORDERED this 9th day of March, 1992.

A handwritten signature in cursive script, reading "Dianne R. Nielson". The signature is written in black ink and is positioned above a horizontal line.

Dianne R. Nielson, 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/007/004 to be mailed by certified mail, postage prepaid, the 9th day of March, 1992 to:

✓Patricia J. Winmill, Esq.
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