

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

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In the Matter of the Request for) STIPULATION AND MOTION
Agency Action of AMAX Coal)
Company, Petitioner, for)
Review of Agency Actions and for) Docket No. 91-001
Hearing on Reasons for Decisions) Cause No. ACT/007/004

* * * * *

STIPULATION

The Utah Division of Oil, Gas and Mining (the "Division") and AMAX Coal Company ("AMAX"), by and through its attorneys, agree and stipulate as follows:

RECITALS:

1. This matter involves appeals to the Board of Oil, Gas and Mining (the "Board") from: (a) a portion of the decision of the Division, dated December 19, 1990 (the "Renewal Decision"), approving renewal of AMAX's permit required under Utah Code Ann. § 40-10-9, ACT/007/004 (the "Permit"); (b) a Division Order and Findings of Permit Deficiency, issued December 18, 1990 (the "Division Order"); and (c) Notice of Violation No. N91-28-2-1, issued July 5, 1991 (the "NOV").

2. AMAX appealed the Renewal Decision and Division Order pursuant to a Request for Review of Agency Actions filed January 16, 1991. The NOV was appealed under a Request for Review of Agency Actions filed December 6, 1991. Those appeals have been consolidated in this matter.

3. The Permit governs AMAX's underground mining and reclamation operations at the Castle Gate Mine, located in Carbon

County, Utah. Surface disturbances associated with the mine are located in several distinct areas, including among others Sowbelly, Hardscrabble, Castle Gate and Crandall Canyons.

4. Under the Renewal Decision, the Division required that AMAX comply with the terms of the Division Order as a condition of the renewal of the Permit.

5. Under the NOV, the Division alleged that AMAX was not in compliance with all of the requirements of the Division Order. Requirements of the Division Order that were not specified in the NOV have been satisfied.

6. On September 19, 1991, the Board issued an Order for Temporary Relief, which stayed enforcement of certain of the abatement measures required under the NOV during the pendency of this review proceeding.

7. By letter dated November 8, 1991, the Division informed AMAX that all abatement requirements imposed under the NOV, except those that were made subject to the Order for Temporary Relief, had been satisfied.

8. AMAX and the Division have been exploring the possibility of settling this matter and may be able to resolve all or some of the issues that have previously divided them. Such a settlement would render a hearing before the Board unnecessary or significantly reduce the complexity of any hearing that might be necessary.

9. AMAX and the Division believe that before either of them can assess whether a settlement of this matter is possible, further submittals, reviews and discussions must take place that

cannot be accomplished in sufficient time to allow the parties to prepare for the hearing scheduled in this matter in February, 1992.

AGREEMENT:

1. This matter should be continued as outlined below so that the parties may fully consider the possibility of a settlement.

2. Such continuance will result in no prejudice to the Division, AMAX or third parties.

3. On December 17-20, 1991, members of the Division's staff and AMAX personnel met to discuss the compliance measures the Division believes are necessary to satisfy the Division Order and abate the NOV (the "December Meeting"). During the December Meeting the parties reached an agreement in principle regarding many of those requirements. The Division believes that the resolution of other issues cannot be had until after AMAX makes certain additional submittals to the Division. All submittals and reviews provided for in this Stipulation will be made in accordance with the R645(614) Rules as agreed to in the December Meeting and on going conversations and correspondence between the parties.

4. The Division agrees that the following items of the Division Order and NOV have been satisfied: a) items not referenced in the NOV; and b) items reflected in the Division's November 8, 1991 letter as having been satisfied. AMAX will be entitled to provide the Division with draft submittals pursuant to the schedule set forth below. The Division will commit staff

and resources to assist AMAX in the preparation of its draft submittals, and will further provide on site consultation and review of the draft submittals with AMAX. AMAX will commit adequate funds and staff to the preparation of the draft submittals.

5. The parties will exercise good faith in attempting to implement the agreements made in the December Meeting, but as further information is developed, each party may find good cause to depart from those agreements and may do so, except as otherwise provided in this Stipulation.

6. The representations and agreements reflected in paragraphs 3-5 relate solely to requirements arising under the Renewal Decision, Division Order and NOV and shall not impair the Division's authority to impose other requirements in future reviews or renewals of the Permit or AMAX's right to contest the same.

7. AMAX will submit revised maps and reclamation designs for the Hardscrabble Canyon area on or before February 14, 1992. At a mutually agreed date as soon as possible thereafter, appropriate members of the Division's staff and AMAX personnel will meet at Hardscrabble Canyon for a site review of the submittal. The Division will provide AMAX, in writing, its complete technical review of the Hardscrabble submittal on or before February 28, 1992 (the "Technical Review"). AMAX will have a reasonable time thereafter in which to make another submittal addressing any deficiencies noted in that review (the "Resubmittal"). The Division's review of the Resubmittal shall

be based on specific requirements set forth in the Technical Review. The Resubmittal shall not be deemed deficient on the basis of any requirement that is not specifically identified in the Technical Review until after the Division gives AMAX written notice of the specific requirement and a reasonable time within which to comply with the requirement. The Technical Review and subsequent notice shall have the same degree of specificity required of notices of violation and cessation orders under R645(614)-400-315 and -323.

8. The Division and AMAX will meet with the Board Chairman at the March Board hearing to apprise him of the status of the settlement negotiations. At that meeting, AMAX will elect whether to proceed with this appeal or to settle the matter in accordance with the terms outlined in this Stipulation.

9. If AMAX elects to proceed with the appeal, this Stipulation shall have no further force or effect. In that event, AMAX and the Division will request the Board Chairman to establish a reasonable hearing date and briefing schedule.

10. If AMAX elects to settle this matter, such settlement will be made on the following terms and conditions:

a) AMAX will waive any claim as to the underlying validity of the Renewal Decision and Division Order, except that, during the pendency of this matter, it shall retain the right to assert: 1) any claim arising out of the NOV; 2) any claim arising out of the implementation or application of the Renewal Decision and Division Order; 3) any claim that the requirements imposed in the reviews provided for in this Stipulation are

contrary to law, in excess of the Division's authority, an abuse of discretion, arbitrary and capricious, a violation of AMAX's right to renewal of the Permit, or in excess of the Division's authority to impose conditions on the renewal of the Permit; and 4) any claim arising under item 24 of the Division Order.

b) AMAX will waive any claim that the requirements of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA") and the Utah Coal Mining Reclamation Act of 1979 ("UCMRA") do not apply to those areas disturbed by mining activities conducted prior to the effective date of those statutes, but used by, or necessary to the operations of, AMAX or its predecessors after that date. Such waiver shall be limited to: a) land located within the disturbed area boundaries currently reflected in the Permit; and b) land located within the disturbed area boundaries as the Division may reasonably require that they be redrawn in the submittals provided for in this Stipulation. The Division may only require such redrawing of the disturbed area boundaries in order to include previously disturbed areas adjacent to the existing boundaries that it reasonably concludes have been used by, or necessary to the operations of, AMAX or its predecessors after the effective date of SMCRA and UCMRA.

c) AMAX will submit to the Division revised maps and reclamation designs for the Castle Gate area on or before March 23, 1992. ^{April} A submittal for Sowbelly Canyon will be made on or before May 1, 1992. ^{Division to respond by May 1st} A submittal of the remaining areas will be made on or before June 1, 1991. ^{May 15, 1992} ^{Division to respond by June 1, 1992} ^{June 15, 1992} ^{Division to Respond by July 1,} Except as the parties may

otherwise agree, the Division's review of the submittals for these areas will take the same format as its review of the Hardscrabble submittal. In each case, AMAX will be afforded a reasonable time in which to make a Resubmittal after receiving the Division's complete Technical Review. In the event adverse weather conditions prevent AMAX from complying with the above stated schedules, the Parties may mutually agree to alter the above dates for compliance.

d) The parties will request the Board to continue this matter until such earlier time as:

1) the Division notifies AMAX that the Division Order has been satisfied and the NOV abated, at which time AMAX will file a motion to dismiss this matter with prejudice;

2) AMAX files a motion requesting a hearing on any of the claims retained under a) above; or

3) the Division files a motion requesting a hearing on a claim that any of AMAX's Resubmittals are not in substantial compliance with: a) the specific requirements of a Technical Review or the specific requirements of a subsequent notice (and a reasonable time to comply has elapsed); and b) the requirements of SMCRA, UCMRA or the regulations promulgated thereunder.

Any motion filed under the latter two circumstances will be accompanied by a request for a pretrial conference with the Board Chairman to establish a reasonable hearing date and briefing schedule.

e) The Division and AMAX agree that the Division's review of AMAX's submittals will be premised upon the following legal conclusions: 1) Reclamation of highwalls must meet those

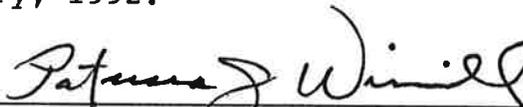
special provisions for highwalls as found under R645(614)-301-553. A highwall is defined to mean "the face of exposed overburden and coal for entry pursuant to underground coal mining operations," which the Division interprets to mean portal face-up areas. 2) All disturbed areas other than highwalls, including cutslopes, will be reclaimed under the general provisions of R645(614)-301-553 as they apply. 3) In determining whether disturbed areas other than highwalls, but including cutslopes, are reclaimed to approximate original contour, approximate original contour will be defined to mean "that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads closely resembles the general surface configuration of the land prior to mining and blends into and compliments the drainage pattern of the surrounding terrain." The statutory and regulatory requirement to return cutslopes to their approximate original contour does not by itself require the total elimination of all cutslopes and can be satisfied by backfilling and grading the disturbed area to create a topography that blends into the undisturbed area, creating land forms that resemble features of the surrounding terrain, such as natural cliffs and talus slopes, and that are compatible with the post mining land use. Should any third party successfully challenge any of these conclusions, or the Division's application of those conclusions in the reviews provided for in this Stipulation, whether during or after the pendency of this matter, the settlement agreement shall have no further effect and thereafter

AMAX shall be free to assert any of the legal claims otherwise waived under a) and b) above. Similarly, AMAX shall be free to assert such claims, should the Department at any time depart from the legal conclusions outlined in this paragraph or, after the pendency of this matter, substantially depart from its previous application of those conclusions.

f) The Order for Temporary Relief entered in this matter on September 19, 1991 shall continue in effect throughout the pendency of this matter, including the continuance described above.

g) The settlement will be made subject to Board approval.

DATED this 30th day of January, 1992.



PATRICIA J. WINMILL

of and for
PARSONS BEHLE & LATIMER
One Utah Center, Suite 1800
201 South Main Street
P.O. Box 11898
Salt Lake City, UT 84147-0898
(801) 532-1234
Attorneys for AMAX Coal Company
251 N. Illinois Street
P.O. Box 967
Indianapolis, Indiana 46206-0967



DR. DIANNE R. NIELSON, DIRECTOR
Division of Oil, Gas and Mining
Department of Natural Resources
State of Utah
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

MOTION

Based upon the attached Stipulation of the parties, AMAX moves the Board for an Order continuing this matter, in accordance with the terms set forth in the Stipulation, until the regularly scheduled March, 1992 Board hearing.

DATED this 30th day of January, 1992.



PATRICIA J. WINMILL

of and for

PARSONS BEHLE & LATIMER

One Utah Center, Suite 1800

201 South Main Street

P.O. Box 11898

Salt Lake City, UT 84147-0898

(801) 532-1234

Attorneys for AMAX Coal Company

251 N. Illinois Street

P.O. Box 967

Indianapolis, Indiana 46206-0967

PROOF OF SERVICE

I hereby certify that I have this day served the foregoing instrument upon all parties of record in this proceeding by causing a copy thereof to be delivered in person to:

Division of Oil, Gas and Mining
Department of Natural Resources
State of Utah
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

DATED at Salt Lake City, Utah, this 30th day of January, 1992.



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

* * * * *

In the Matter of the Request for) ORDER
Agency Action of AMAX Coal)
Company, Petitioner, for)
Review of Agency Actions and for) Docket No. 91-001
Hearing on Reasons for Decisions) Cause No. ACT/007/004

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Based upon the Stipulation between the Division of Oil,
Gas and Mining and AMAX Coal Company ("AMAX"), the Motion of
AMAX, and good cause appearing therefor,

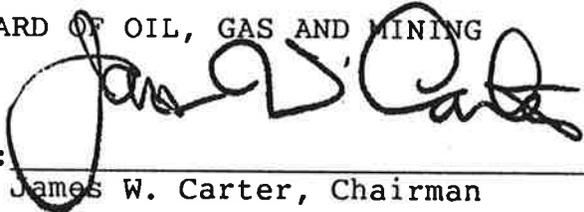
IT IS HEREBY ORDERED, THAT:

This matter is continued, in accordance with the terms
set forth in the Stipulation, until the regularly scheduled
March, 1992 Board hearing.

DATED this 5th day of February, 1992.

BOARD OF OIL, GAS AND MINING

By:


James W. Carter, Chairman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing ORDER for Docket No. 91-001, Cause No. ACT/007/004 to be mailed by certified mail, postage prepaid, the 5th day of February, 1992 to:

Patricia J. Winmill
Parsons Behle & Latimer
185 South State Street
Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898

Kim A. Kubota