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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 : FINDINGS, CONCLUSIONS
OF FACT OF VIOLATION N92-41-4-2, AND ORDER
PART 1 OF 2, AMAX COAL COMPANY, :
CASTLE GATE MINE, CARBON COUNTY, : INFORMAL HEARING
UTAH, ACT/007/004 : CAUSE NO. ACT/007/004

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On September 25, 1992, the Division of Oil, Gas and Mining ("Division") held an informal hearing at the request of Amax Coal Company ("Amax") concerning the fact of violation for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

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

Petitioner: Richard H. Allison, Jr., P.E.
("Amax") Project Supervisor
Amax Coal Company

Steven R. Laird, Esq.
Manager, Legal and Regulatory Affairs
Amax Coal Company

Division: Lowell Braxton
Associate Director for Mining

Paul B. Baker
Reclamation Specialist
Issuing Inspector

Board: Joe Helfrich
Assessment Officer
Penalty Assessment

Ronald W. 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 NOV N92-41-4-2, Parts 1 of 2 and 2 of 2, 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. NOV N92-41-4-2 was issued on June 8, 1992, by Paul Baker, based on an inspection of the Castle Gate Mine on June 2, 1992.
4. NOV N92-41-4-2 includes two parts. Only Part 1 of 2 is being appealed with respect to the fact of violation during this informal hearing.
5. N92-41-4-2, Part 1 of 2, was written for failure to follow the approved plan for pest (weed) control, and failure of the establish plant species to meet the requirements of Utah noxious weed laws, as provided in Utah Admin. R. 645-301-341.240, 301-351, and 301-353.200.
6. Required remedial action included development of a plan to control the noxious weed, dyer's woad, consultation with the Division if chemical treatment was proposed, and implementation of the plan in Hardscrabble Canyon.

7. Amax Mine Plan states in chapter 9, page 51, states:

No pest or disease is anticipated. However, a plan to control disease or pests will be developed with the Division should a problem arise.

8. Dyer's woad was first noted during a courtesy inspection of the Hardscrabble Canyon area of the mine, when company officials and Division staff were present on March 12, 1992.

9. In a letter dated March 13, 1992, the Division referenced the requirements of Amax's plan for the Castle Gate Mine regarding noxious weed control and suggested that Amax follow its mine plan by developing a plan for control of the dyer's woad.

10. During the partial inspection conducted by Paul Baker on May 8, 1992, and in the written inspection report, dated May 15, 1992, and mailed to Richard Allison, the infestation of dyer's woad was again discussed, and the importance of developing a plan and conducting control work before mature seeds formed was again emphasized.

11. The Division did not receive a plan from Amax for control of dyer's woad in response to either its March 13, 1992, letter, or its May 15, 1992, inspection report.

12. During the informal conference, Amax's representative indicated that it thought a more detailed plan was needed, and it was preparing that plan. Representatives indicated that it was not until the NOV was issued that they realized that implementation of a simple control plan was all that was needed. That plan was developed and implemented within the required

abatement time, on June 11, 1992.

CONCLUSIONS OF LAW

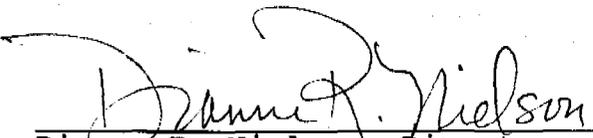
1. Amax's Mine Plan and Utah Admin. R. 645-301-341.240, 301-351, and 301-353.200 require development of a plan for control when a noxious weed is identified on the mine site.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N92-41-4-2, Part 1 of 2 is upheld.
2. The finalized assessment, resulting from the Assessment Conference of September 25, 1992, 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 civil penalty in escrow.

SO DETERMINED AND ORDERED this 26th day of October, 1992.


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 in Cause No. ACT/007/004 to be mailed by certified mail, postage prepaid, on the 26th day of October, 1992, to the following:

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