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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 N94-41-2-2 : AND ORDER
PART 1 OF 2 AND PART 2 OF 2 :
AMAX COAL COMPANY, CASTLE :
GATE MINE : CAUSE NO. ACT/007/004

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On December 14, 1994, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to AMAX Coal Company for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding: James W. Carter, Director

Petitioner: Lonnie Mills
Mel Coonrod
Dave Steed

Division: Paul Baker
Joe Helfrich, Assessment Officer

Board: Ron Daniels, Assessment Conference Officer

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing, and on 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 N94-41-2-2, Parts 1 of 2 and 2 of 2, was held immediately following this informal hearing regarding fact of violation. The requirement to pay the assessed penalty is stayed pending this decision upon the informal review of fact of violation.

3. Part 1 of 2 was written for "failure to construct a sediment control structure according to Mining and Reclamation Plan. 2) Failure to construct siltation structures before beginning reclamation operations. 3) Constructing an impounding structure without designs or approval. 4) Failure to follow the sequence of installing sediment control structures outlined in the Mining and Reclamation Plan."

4. Part 2 of 2 was written for "failure to conduct mining and reclamation operations in accordance with the Air Quality Approval Order and regulations promulgated under the Clean Air Act."

5. Page 3.2-31 of the approved reclamation plan provides "whenever possible, a minimum of one method of sediment control will be in place during reclamation construction. The existing ponds will be left in place as long as possible during the grading operation. Prior to removal of the ponds, filter fabric (silt) fences will be installed to collect sediment runoff from areas which will not report to sedimentation Ponds 016 and 017 . . . Although every reasonable effort will be made to have at least one sediment control measure in place, there may be a period of time when that is not feasible."

6. The berm designed to intercept drainage from reclaimed areas and divert it to pond 16 was in need of repair to meet its design height. A fact which was brought to the operator's attention during an inspection in May, 1994. The berm had been in place for one year at the time of the inspection and had not breached to that date. After issuance of the violation, the operator calculated the maximum flow which the berm could be expected to be required to handle and it was determined that the flow depth would be less than one inch.

7. The operator removed operational sediment pond 5 before constructing sediment pond 17 without first installing filter fabric fences to control sediment runoff.

8. Administrative Rule R307-1-4.5.4 B. adopted pursuant to the Utah Clean Air Act provides "Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities and reclamation operations." (emphasis added)

9. After this NOV was abated by placing approximately five loads per day of water on the subject road, much less dust was present in the air.

CONCLUSIONS OF LAW

1. The maintenance provided to the berm in question did not fall below the threshold rendering it a violation of the approved plan, and was therefore not a violation.

2. Although completion of the construction of pond 17 prior to the removal of operational pond 5 was highly impractical, the reclamation timetable

required the installation of filter fabric fences prior to the disturbance of operational ponds in order to collect sediment runoff during periods when no operations pond was in effect.

3. Because the application of water to the roads significantly reduced fugitive dust levels, the non-application of water did not "minimize" fugitive dust as required by the regulations and reclamation plan.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N94-41-2-2 Part 1 of 2 is upheld.
2. NOV N94-41-2-2 Part 2 of 2 is upheld.
3. The finalized assessment, resulting from the Assessment Conference of December 15, 1994, is due and payable to the Division 30 days from the date of this Order.
4. The Petitioner may appeal the determinations of fact of violation and/or the finalized assessments to the Board of Oil, Gas and Mining 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 7th day of March, 1995.


James W. Carter, Director
Division of Oil, Gas and Mining
State of Utah

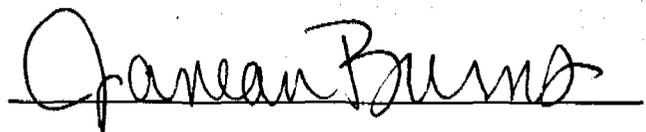
CERTIFICATE OF MAILING

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 first-class, postage prepaid, on the 9th day of March 1995, to the following:

Lonnie Mills, Sr. Environmental Engineer
AMAX Coal Company
P.O. Drawer PMC
Price, Utah 84501

Mel Coonrod
EIS
4855 N. Spring Glen Road
Helper, Utah 84526

Dave Steed
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A handwritten signature in black ink, reading "Janean Burns", is written over a horizontal line.