

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 N94-32-1-1, : AND ORDER
SUNNYSIDE COAL COMPANY :
: CAUSE NO. ACT/007/007

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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 Sunnyside Coal Company for the above-referenced Notice of Violation ("NOV"). The following individuals attended:

Presiding: James W. Carter
Petitioner: Robert Burnham
Division: Ron Daniels
Assessment Conference Officer
Board: Joe Helfrich
Assessment 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 N94-32-1-1, 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. NOV N94-32-1-1 was written for "Failure to comply with the terms of the approve[d] plan. Failure to conduct water monitoring as required in the approved plan."

4. The water samples in question were collected by Sunnyside and were delivered to Chemtech Laboratory for analysis in February, 1994. On March 25, 1994, Sunnyside filed a petition for protection in bankruptcy court. On April 14, 1994, following demand by Sunnyside for release of the analyses, Chemtech informed Sunnyside that it would not release the data unless Sunnyside paid the full unsecured claim of Chemtech in the amount of \$22,133.

CONCLUSIONS OF LAW

1. Sunnyside failed to comply with the terms of its approved program in reporting the results of analysis of water samples required by the approved plan.

2. Chemtech's refusal to release the data constitutes an exceptional factor which renders use of the formula contained in R645-401-330 demonstrably unjust.

ORDER

NOW THEREFORE, it is ordered that:

1. NOV N94-32-1-1 is upheld.
2. The assessment resulting from the Assessment Conference of December 14, 1994, is hereby waived and reduced to zero.

3. 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 2nd day of February 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/007/007 to be mailed by certified mail, postage prepaid, on the 2nd day of February 1995, to the following:

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