

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

mine file
Internal
0070012
OK

-----oo0oo-----
IN THE MATTER OF MID-TERM : FINDING OF INADEQUATE
PERMIT REVIEW, BOND : BOND IN RE: CASTLE VALLEY
READJUSTMENT AND ALTERNATIVE : RESOURCES, WELLINGTON
POST-MINING LAND USE, : PREPARATION PLANT,
WELLINGTON PREPARATION PLANT : ACT/007/012
PERMIT :
: DOCKET NO. 93-009
: CAUSE NO. ACT/007/012

-----oo0oo-----

In the above entitled matter, the Division makes the following Written Findings and Conclusions of Law concerning the adequacy of the reclamation bond posted by Castle Valley Resources, (the "Permittee").

FINDINGS OF FACT

1. Permit ACT/007/012 (the "permit") to conduct coal mining and reclamation operations pursuant to Utah Code Ann. § 40-10-1 et seq. (1953, as amended) was originally issued to U.S. Steel Mining Corporation on December 10, 1984. This permit and all attached conditions were subsequently transferred to Kaiser Coal Corporation on February 25, 1986.

2. This permit was transferred to Genwal Coal Company who accepted the permit subject to all the conditions incorporated in the permit, including a condition known as Stipulation 817.103-(1)-TLP. (See correspondence and attachments dated November 2, 1984, attached hereto as Exhibit "A".)

3. The permit was again transferred to the permittee Castle Valley Resources from Genwal Coal Company on December 6, 1991. At the time of the permit transfer the permittee was

required to, and agreed to conduct operations under the permit in full compliance with the terms and conditions of the permit as transferred from Genwal Coal Company. (See Exhibit "B" attached hereto.)

4. During the mid-term review of the permit, the Division addressed Stipulation 817.103-(1)-TLP. This Stipulation states:

The success of test plots shall be evaluated at the time of permit renewal. At that time, information from test plots contained in annual monitoring reports, laboratory data, field evaluations and any other measures necessary shall be weighed to determine the adequacy of the twelve (12) inch coarse slurry capillary barrier. At that time, the applicant shall submit a report to the regulatory authority providing interpretations of the available test plot information. This report shall be prepared by a qualified agent of the operator and any conclusions or recommendations shall be subject to the concurrence of the regulatory authority. In the event that the operator feels that the study does not provide adequate basis to maintain the proposed depth of coarse slurry capillary barrier he may request an extension of the study period. At the time of permit renewal or at the time of completion of the approved extended study, bonding for this portion of the reclamation plan shall be adjusted to reflect the costs associated with any necessary changes in the cover depth. (Emphasis added)

5. The bond amount accepted by the Division in 1989 was based on covering the refuse ponds with eighteen (18) inches of coarse refuse and six (6) inches of top soil. This reclamation technique was tentatively accepted subject to the condition that its effectiveness be substantiated by a test plot program as set forth in the above referenced stipulation. (See Exhibit "C" attached hereto.)

6. Technical analysis by Priscilla Burton, Soil Reclamation Specialist, and Paul Baker, Reclamation Biologist,

demonstrated that the test plots had failed to demonstrate that reclamation could be completed using the proposed cover. (See Exhibits "D" and "E" attached hereto.)

7. The Division placed the permittee on notice of the condition of this stipulation and consequently, the inadequacy of the bond on October 19, 1992. The Division also at that time provided the permittee with a bond calculation based upon full compliance with regulation R. 645-301-553.260 requiring coal mine waste to be covered with four feet of non-toxic/non-acid forming material. (See Exhibit "F")

8. On December 10, 1992, the permittee provided the Division with a revised map of the permit area, demonstrating a reduction in distances over which material would need to be hauled to be in compliance with regulation R. 645-301-553.260. (See Exhibit "G")

9. On February 3, 1993, the Division revised the amount of the bond based upon the shortened haul distances from \$6,603,000 to \$4,881,000. (See Exhibit "H")

10. On February 24, 1993, the Division issued a Cessation Order pursuant to Utah Admin. R. 645-301-830. (See Exhibit "I")

11. On February 24, 1993, the Board of Oil, Gas and Mining heard argument from the permittee on a Motion for Temporary Relief from the enforcement action taken by the Division pursuant to Utah Admin. R. 645-301-830. The Board determined that the

permittee would likely succeed on the merits in its objection to the Division's enforcement action based upon unspecified procedural concerns. (See Exhibit "J")

CONCLUSIONS OF LAW

1. The State Regulation, Utah Admin. R. 645-301-553.260 requires that coal mine waste be covered with four feet of non-toxic/non-acid forming materials. The permittee has not demonstrated the reclaimability of the spoil areas with a cover of less than four feet as required by regulation.

2. The Division's bond determination of \$4,881,000 is based on covering the coal refuse with four feet of inert cover materials.

3. The bond currently in place is in an amount less than that determined by the Division as necessary to ensure completion of the reclamation plan, if the work must be completed by the Division in the event of forfeiture.

4. The permittee is operating a coal mining and reclamation operation pursuant to a permit, a condition of which, requires a bond sufficient to allow the Division to finalize reclamation under the bond in the event of forfeiture. This condition has not been met. The amount necessary to meet the requirement of the law which must be posted as performance bond is determined to be \$4,881,000.

5. If these Findings and Conclusions constitute an adjustment of the amount of bond pursuant to Utah Admin. R. 645-

301-830.400 then the permittee must be granted an opportunity for an informal conference. Therefore, pursuant to Utah Admin. R. 645-300-123, if a written request is timely sought, the Division will hold an informal conference in compliance with this rule, thirty days after the last newspaper advertisement published by the Division under Utah Admin. R. 645-300-121. The date, time and location of the informal conference will be sent to the applicant, surety, and all other parties who wish to intervene and will be advertised by the Division in a newspaper of general circulation in the locality of the permit area. All material, except as provided in Utah Admin. R. 645-300-124.200 and R. 645-300-124.300 relating to permit, are available to the general public at reasonable times for inspection and copying.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING

Lowell P Braxton

Lowell Braxton, Acting Director
3-15-93

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDING OF INADEQUATE BOND IN RE: CASTLE VALLEY RESOURCES, WELLINGTON PREPARATION PLANT, ACT/007/012 for Docket No. 93-009, Cause No. ACT/007/012 to be mailed by certified mail, postage prepaid, the 11th day of March 1993, to the following:

Lynn M. Davis
Safeco Insurance Company of America
Home Office, Safeco Plaza
Seattle, Washington 98185

Jon Passic
Castle Valley Resources
P.O. Box 1282
Huntington, Utah 84528

Kim A. Kubota



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

VACATION/TERMINATION OF NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:

Name CASTLE VALLEY RESOURCES

Mailing Address P. O. BOX 1282, HUNTINGTON, UTAH 84528

State Permit No. ACT/007/012

Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., *Utah Code Annotated* (1953):

Notice of Violation No. N _____ dated _____, 19 ____.

Cessation Order No. C 93-39-1-1 dated FEBRUARY 24, 1993.

Part 1 of 1 is vacated terminated because of Boards ruling regarding
procedural concerns as determined in February 24th board hearing under
Docket No. 93-009.

Part ____ of ____ is vacated terminated because _____

Part ____ of ____ is vacated terminated because _____

Date of service/ mailing _____ Time of service/ mailing _____ a.m. p.m.

R. JAY MARSHALL
Permittee/Operator representative

Signature

CHIEF ENGINEER / RESIDENT AGENT
Title

LOWELL P. BRAXTON
Division of Oil, Gas & Mining

ACTING DIRECTOR
Title

Lowell P. Braxton
Signature