



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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November 24, 1997

Mine file

CERTIFIED RETURN RECEIPT REQUESTED
No. P 074 976 883

Vicky S. Bailey
Earthfax Engineering
7324 South Union Park Avenue
Midvale, Utah 84047

Re: Findings of Fact, Conclusions of Law, Order and Discussion on the Assessment for Notice of Violation (NOV) N97-26-7-1, ACT/007/020, Horizon Coal Corporation, Horizon Mine, Folder No. 5, Carbon County, Utah

Dear Ms. Bailey

On November 14, 1997, an Informal Hearing and Assessment Conference was held to review the fact of violation and proposed assessment for state violation N97-26-7-1, Horizon Mine, Horizon Coal Corporation. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the following shall constitute the findings of fact, conclusions of law and order and finalized assessment.

Fact of Violation

Notice of Violation N97-26-7-1 (the NOV) was written "for failure to receive Division of Oil, Gas and Mining approval before modifying an undisturbed diversion."

Senior Reclamation Specialist Bill Malencik (the inspector) noted that modification of the undisturbed drainage occurred within the permit area and that the modification included portions of the disturbed area. He further asserted that the activities resulting in the NOV were contemplated in the final reclamation plan, not the operation plan (the stage of development the mine is presently in). Also, modifications to the undisturbed drainage affected riparian zones that are part of the approved Mining and Reclamation Plan (MRP). In either case approval by the Division is necessary prior to commencement of surface disturbing operations.

In representing Horizon Coal, the Permittee, Vicky Bailey noted that the need to obtain approval prior to commencement of operations may not be clearly spelled out in the R645 rules. She further indicated that the operations being conducted were in furtherance of a stream alteration plan approved by the State Engineer, and suggested the Division of Oil, Gas and Mining did not have authority over activities conducted under a stream alteration plan since the operations were being conducted at the request of the surface owner, an entity distinct from the Permittee.

Findings

1. The request for an Informal Hearing and Assessment Conference was made in a timely manner and was appropriately noticed.
2. Changes in the function of the diversion affecting juxtaposed riparian areas within the permit area constitute a change to the MRP.
3. R645-303-222 requires an operator to obtain approval of a permit change by making application in accordance with R645-303-220 for changes in the method of conduct of mining or reclamation operations or in the conditions authorized or required under the approved permit.
4. Activities conducted within a permit area that are not "Coal Mining and Reclamation Operations" fall into the category of "other relevant information" as addressed at R645-301-521.190, and may need to be included in the operation portion of the MRP.
5. Since the stream alteration permit work being conducted within the permit area of the Horizon Mine is a consequence of County road relocation which itself is a direct consequence of the establishment of the Horizon Mine, this activity should be noted in the operation plan.

Order

Notice of Violation N97-26-7-1 is upheld.

Remarks

Before mechanized activities occur within the permit area of a coal mine, and especially when these activities will be conducted by persons who are at times under contract to the Permittee, and more particularly when these activities will be supervised by a person who also represents the Permittee, it is incumbent on the Permittee that the Division of Oil, Gas and Mining be appraised of these activities, and that the Division be given an opportunity to determine if these activities constitute "Coal Mining and Reclamation Operations" or the other relevant information" contemplated in the Utah Coal Regulatory Program requirements.

Assessment Conference

The assessment conference was not held, since the NOV had not been abated at the time of the Informal Hearing.

Finalized Assessment

Since the fact of the violation has been upheld, but compliance has not been achieved, it is prudent not to finalize the penalty until the NOV has been abated and terminated. However, in the event that Horizon Coal chooses to appeal the NOV before the Board of Oil, Gas and Mining, the proposed \$600 penalty must be escrowed as noted in the paragraph below.

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Vicky Bailey

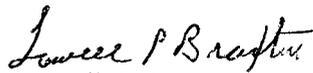
ACT/007/020, Horizon Mine

November 24, 1997

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal on the fact of the violation to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within a maximum of thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse. Please send any escrowed monies to the Division of Oil, Gas and Mining, mail c/o Vicki Bailey at the address listed above.

If the NOV is not appealed before the Board of Oil, Gas and Mining, this proposed civil penalty will be reviewed when compliance with the terms of the NOV and this Order have been achieved and the NOV has been terminated. In the case of no appeal before the Board, the proposed penalty need not be escrowed with the Division.

Sincerely,



Lowell P. Braxton

Assessment Conference Officer

vb

cc: M. Wright
P. Grubaugh-Littig
J. Helfrich
PFO

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ACT 10071020 NO 7-26-71

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