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

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February 25, 1998

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 714 040

Denise A. Dragoo
Van Cott, Bagley, Cornwall & Mc Carthy
50 South Main Street, Suite 1700
P. O. Box 45340
Salt Lake City, Utah 84145-0340

Re: Findings of Fact, Conclusions of Law and Order for Cessation Order (CO) C98-26-1- 1
ACT/007/020, Horizon Mining, LLC, Horizon Mine, Folder No. 5, Carbon County, Utah

Dear Ms. Dragoo:

On February 20, 1998 an informal hearing was held to review the fact of violation for state Cessation Order (CO) C98-26-1-1, Horizon Mine, Horizon Mining, LLC ("Horizon"). As a result of a review of all pertinent data and facts, including those presented in the informal hearing, the following shall constitute the Findings of Fact, Conclusions of Law and Order:

Fact of Violation/Cessation Order

The CO was written "for failure to receive Division of Oil, Gas and Mining approval before installing/extending an existing 36" undisturbed drainage culvert, a new smaller culvert that is not included in the pending amendment, removal and storage of topsoil, and extending the mine pad."

The Division inspector, Senior Reclamation Specialist William Malencik provided an overview of the field conditions, and circumstances that were existent on January 13, 1998, when the inspection resulting in issuance of the CO was conducted. Photographs taken during the inspection and sketch maps and tracings of maps from the approved Mine Reclamation Plan (MRP) were used to support the fact of the violation. In discussing the basis for issuing a Cessation Order instead of a violation, Mr. Malencik cited other recent unpermitted activities at this operation that had resulted in Notices of Violations, discussed Horizon's conduct of operations without appropriate approval, and indicated discussions with management within the Division of Oil, Gas and Mining's (DOGM) Coal Program concluded a CO might better carry the message that coal mining and reclamation operations must be part of an approved permit prior to the activities being conducted.

Denise Dragoo, council for Horizon argued that since an approved permit existed for this operation, issuance of a CO without an allegation of imminent harm was an inappropriate enforcement

action by the Division. Vicky Bailey, also representing the operator, described the need to enlarge the mine facilities pad for traffic safety reasons, and stated that she believed these were mitigating circumstances. Reference was made to a protracted time frame for approval of the amendment containing the improvements to the facilities pad that were subject of the CO.

Mary Ann Wright, Associate Director of Mining; Joe Helfrich, Permit Supervisor; and Bob Davidson, Senior Reclamation Specialist, Soils, DOGM, respectively, discussed the chronology of the amendment that contained the subject improvements, and indicated a significant proportion of the elapsed time involved the operator's response to data that had been inadequately submitted to the Division.

Some discussion on the need to isolate the circumstances surrounding the lack of approval of the amendment from the fact of the violation (the CO) followed. Ultimately, Horizon's representatives agreed that they would not contest the fact of a violation written for circumstances identical to the CO, if the CO were vacated.

Findings

1. The informal hearing was timely made and appropriately noticed.
2. Evidence supporting issuance of an imminent harm/imminent health and safety Cessation Order was not presented at the informal hearing.
3. Cessation Order C98-26-1-1 did not result from failure to abate a Notice of Violation.
4. "Coal Mining and Reclamation Operations" must be conducted under the terms and conditions of an approved permit.
5. The Division must ensure that permits are revised prior to changes in coal mining and reclamation operations.
6. Horizon did not have approval from the Division to install/extend the 36" disturbed area drainage culvert, the smaller culvert, the removal and storage of topsoil and the extension of the mine pad: the activities that are subject of the CO.
7. The activities conducted by Horizon and enumerated in finding #6 are for the purposes of permit number ACT/007/020, permit amendments.

Order

1. Cessation Order C98-26-1-1 is vacated.

Page 3
Denise Dragoo
ACT/007/020
February 25, 1998

2. The Division is ordered to issue a Notice of Violation to Horizon retroactive to January 13, 1998, with identical Nature, Provisions, Portion of Operations to which Notice Applies, Operations to be Ceased, Remedial Activities and Abatement times as those enumerated in C98-26-1-1.
3. For the Notice of Violation mentioned at #2 above, the Division will issue an identical proposed assessment to that issued for C98-26-1-1.
4. The Division will perform a Patterns of Violation review for the Horizon Mine as anticipated at R645-400-332.

Remarks

During the informal hearing, the Hearing Officer voiced concerns over the number of violations issued to Horizon for failure to acquire approved plans prior to implementing operations. This concern is reiterated here for the record. One potential solution to this problem could be establishment of a dialogue between the Permittee and the Division that would discuss mechanisms to ensure this trend does not continue. Persons representing the operator at the February 20, 1998 informal hearing agreed to discuss establishment of such a dialogue with the operator.

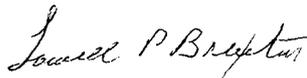
Assessment Conference

The vacation of C98-26-1-1 precludes the need for an Assessment Conference for this Cessation Order.

Finalized Assessment

Not applicable.

Sincerely,



Lowell P. Braxton
Informal Hearing Officer

vb
cc: V. Bailey, Earthfax
M. Wright
W. Malencik
P:\GROUPS\MINES\WP\HORIZ.WPD

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3. Article Addressed to:

DENISE DRAGOO RESIDENT AGENT
 VAN COTT BAGLEY CORNWALL & MC GARTHY
 50 S MAIN ST STE 1700
 SALT LAKE CITY UT 84111

4. Article Number
 p 546 714 040 /

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