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# United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Applicant/Violator System Office
2679 Regency Road
Lexington, Kentucky 40503

SEP 19 1997

RECEIVED
SEP 25 1997
DIV. OF OIL, GAS & MINING

Mr. Bruce D. Reed, Director of Legal Affairs
Berwind Natural Resources Corporation
3000 Centre Square West, 1500 Market Street
Philadelphia, Pennsylvania 19102

Dear Mr. Reed:

This letter constitutes the final decision of the Office of Surface Mining Reclamation and Enforcement (OSM) concerning the presumption of an ownership or control link between Dr. Thomas V. Falkie and Cyprus Amax Minerals Company (hereinafter "Cyprus Amax"). In your April 8, 1997, letter, you challenge the presumption of Dr. Falkie's control of Cyprus Amax. OSM now issues a final agency decision in this matter.

In your letter you state that due to the nature of Dr. Falkie's involvement on the Cyprus Amax board and because the board has no "authority for or participation in day-to-day operations of Cyprus and its subsidiaries" a link between Falkie and Cyprus Amax's coal operations is precluded. Essentially, you have argued that Dr. Falkie's duties within Cyprus Amax are such that he does not have "control" within that corporation, and therefore, there can be no presumption of an ownership or control link between Berwind Natural Resources Corporation (hereinafter "Berwind") and Cyprus Amax based upon his being a controller common to the two corporations.

OSM has reviewed the information you provided as well as other information available to us. OSM also requested information from Cyprus Amax and we have included the response in our review. In summary, Dr. Falkie has been a director of Cyprus Amax since July 1, 1988, and is a member on three of the board's five committees. None of the three committees on which Dr. Falkie serves appear to have the authority, directly or indirectly, to determine the manner in which the surface coal mining operations of Cyprus Amax are conducted as required pursuant to 30 CFR § 773.5(b).

DECISION

It is OSM's decision that the presumption of Dr. Falkie's ownership or control relationship to Cyprus Amax is successfully rebutted. Therefore, there is no ownership or control link between Berwind and Cyprus Amax based upon the association of Dr. Falkie that is common to them. The

data describing Dr. Falkie's association with Cyprus Amax in the Applicant/Violator System will be amended to reflect this decision.

Should additional information in this matter come to the attention of OSM, the agency reserves the right to re-open this case and to issue a new decision based upon additional findings.

APPEALS PROCEDURES

This decision may be appealed to the Department of Interior's Office of Hearings and Appeals in accordance with procedures contained at 30 CFR § 773.24 and 43 CFR §§ 4.1380 through 4.1387. In accordance with the provisions of 30 CFR § 773.24 and 43 CFR § 4.1381, a request for such appeal must be filed within 30 days of the service of this decision. The relevant regulations may be found at pages 54354-54355 and 54363-54364 in volume 59 of the Federal Register (October 28, 1994). Please direct such appeal to:

Hearings Division
Office of Hearings and Appeals
U.S. Department of the Interior
4015 Wilson Boulevard
Arlington, Virginia 22203

Questions concerning this decision may be directed to Sherry V. Wilson, Acting Investigations Team Leader, AVS Office, 2679 Regency Road, Lexington, Kentucky 40503, (606) 233-2793. Questions concerning the appeals procedures may be directed to the Office of Hearings and Appeals at (703) 235-3750.

Sincerely,

Earl D. Bandy, Jr., Chief
AVS Office, Lexington

cc: Mr. Philip C. Wolf, Cyprus Amax Minerals Company
Colorado Office of Mined Lands Reclamation
Kentucky Department for Surface Mining Reclamation and Enforcement
Pennsylvania Bureau of Mining and Reclamation
Utah Division of Oil, Gas and Mining
West Virginia Division of Environmental Protection