

Minjela

PETER STIRBA (Bar No. 3118)
STIRBA & HATHAWAY
Attorneys for Plaintiff
Hidden Valley Coal Company
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY :

Plaintiff, :

v. :

the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING, :

Defendants. :

**ORDER EXTENDING THE
TEMPORARY RESTRAINING
ORDER**

Case No. 920904813CV

Judge Glenn Iwasaki

Based upon the parties' Stipulation and for good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Temporary Restraining Order entered September 11, 1992, is extended and will remain in full force and effect until October 20, 1992 at 3:35 p.m.

2. If a hearing on Plaintiff's Motion for a Preliminary Injunction is held as presently scheduled on September 29, 1992 at 2:00 p.m., or any time before October 20, 1992 at 3:35 a.m., the Temporary Restraining Order will expire upon the conclusion of that hearing.

DATED this ____ day of September, 1992.

BY THE COURT:

JUDGE GLENN IWASAKI

CERTIFICATE OF DELIVERY

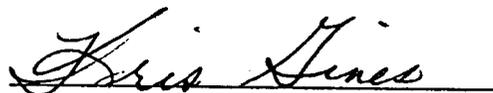
I hereby certify that on this 17 day of September, 1992, a true and correct copy of the foregoing ORDER EXTENDING THE TEMPORARY RESTRAINING ORDER was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants Attorney General
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Jan Brown, Docket Secretary
Utah Board of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Dr. Dianne R. Nielson, Director
Utah Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Denise Dragoo
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151



ruce file

PETER STIRBA (Bar No. 3118)
STIRBA & HATHAWAY
Attorneys for Plaintiff
Hidden Valley Coal Company
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	STIPULATION EXTENDING
	:	THE TEMPORARY
	:	RESTRAINING ORDER
v.	:	
the UTAH BOARD OF OIL, GAS &	:	
MINING and the UTAH DIVISION	:	Case No. 920904813CV
OF OIL, GAS & MINING,	:	
Defendants.	:	Judge Glenn Iwasaki

The above-named parties, by and through their counsel of record, hereby stipulate and agree as follows:

WHEREAS, a Temporary Restraining Order was entered by the Court on September 11, 1992; and

WHEREAS, the Temporary Restraining Order will, by its terms, expire on Monday, September 21, 1992 at 3:35 p.m.; and

WHEREAS, at the request of the Court, the hearing on Plaintiff HVCC's Motion for a Preliminary Injunction has been continued until September 29, 1992 at 2:00 p.m.;

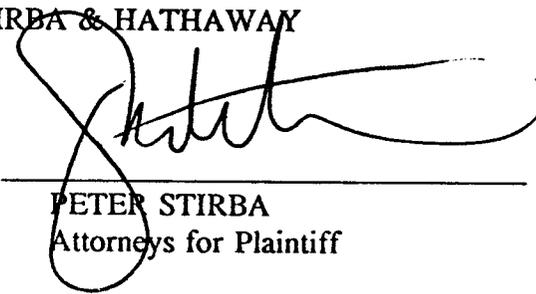
NOW, THEREFORE, in consideration of the above, the parties hereto, by and through their respective attorneys of record, hereby stipulate and agree that:

1. The Temporary Restraining Order entered September 11, 1992, is extended and will remain in full force and effect for thirty additional days, until Tuesday, October 20, 1992, at 3:35 p.m.

2. If a hearing on Plaintiff's Motion for a Preliminary Injunction is held as presently scheduled on September 29, 1992, or any time before October 20, 1992, at 3:35 a.m., the Temporary Restraining Order will expire upon the conclusion of that hearing.

DATED this 17th day of September, 1992.

STIRBA & HATHAWAY

By:  _____

PETER STIRBA
Attorneys for Plaintiff

DATED this ____ day of September, 1992.

ATTORNEY GENERAL'S OFFICE

By: _____

WILLIAM R. RICHARDS
THOMAS A. MITCHELL
Assistants Attorney General
Attorneys for Defendants

Y. Imfeld *DRN*
MYI

FILED

SEP 15 1992

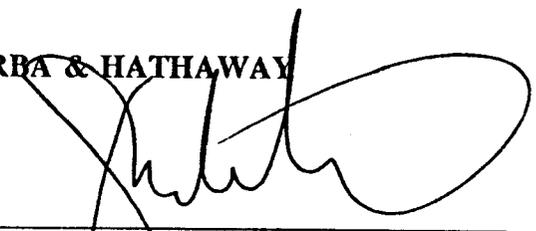
PETER STIRBA (Bar No. 3118)
STIRBA & HATHAWAY
Attorneys for Plaintiff
Hidden Valley Coal Company
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

SECRETARY, BOARD OF
OIL, GAS & MINING

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	NOTICE OF FILING OF
	:	AFFIDAVIT OF LEE
	:	EDMONSON
v.	:	
the UTAH BOARD OF OIL, GAS &	:	
MINING and the UTAH DIVISION	:	Case No. 920904813CV
OF OIL, GAS & MINING,	:	
Defendants.	:	Judge Glenn Iwasaki

Notice is hereby given that on this 14th day of September, 1992, the original Affidavit of Lee Edmonson in support of Plaintiff Hidden Valley Coal Company's Motion for a Temporary Restraining Order was filed with the Court.

STIRBA & HATHAWAY

BY: _____
PETER STIRBA
Attorneys for Plaintiff Hidden Valley
Coal Company

CERTIFICATE OF SERVICE

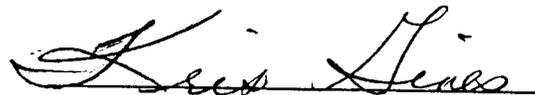
I hereby certify that on this 14th day of September, 1992, a true and correct copy of the foregoing NOTICE OF FILING OF AFFIDAVIT OF LEE EDMONSON was mailed, postage prepaid, to the following:

William R. Richards
Thomas A. Mitchell
Assistants Attorney General
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Jan Brown, Docket Secretary
Utah Board of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Dr. Dianne R. Nielson, Director
Utah Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Denise Dragoo
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151

A handwritten signature in cursive script, appearing to read "Kris Lewis", written over a horizontal line.

Minefele

LAW OFFICES
STIRBA & HATHAWAY
A PROFESSIONAL CORPORATION
SUITE 1150
215 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84111

PETER STIRBA

TELEPHONE: (801) 364-8300
FACSIMILE: (801) 364-8355

September 11, 1992

HAND DELIVERY

William R. Richards
Thomas A. Mitchell
Assistants Attorney General
Division of Oil, Gas & Mining
Three Triad Center
355 West North Temple, #350
Salt Lake City, Utah 84180-1203

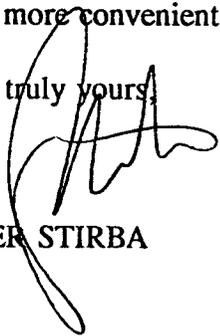
Re: *Hidden Valley Coal Company*

Gentlemen:

Enclosed is a copy of the Temporary Restraining Order.

Margaret went downstairs and got the first available setting. If September 23 is a problem, please let me know and we can change it to a more convenient time.

Very truly yours,


PETER STIRBA

PS/kg
cc: Lee Edmonson

RECEIVED

SEP 11 1992

DIVISION OF
OIL GAS & MINING

PETER STIRBA (Bar No. 3118)
STIRBA & HATHAWAY
Attorneys for Plaintiff
Hidden Valley Coal Company
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	TEMPORARY RESTRAINING ORDER
v.	:	
the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Case No. 920904813CV
Defendants.	:	Judge Leslie A. Lewis

Based upon the Motion of the Plaintiff Hidden Valley Coal Company, the Affidavit of Lee Edmonson in support thereof, the arguments of counsel, and good cause appearing before,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Defendants Board of Oil, Gas and Mining and the State of Utah are prevented from enforcing, implementing or acting upon in any way the Cessation Order, No. C 92-26-1-2, issued by the Defendants on September 1, 1992 or the Notice of Violation issued by Defendants on January 21, 1992. No civil or other penalty of any kind will accrue as a result of Hidden Valley Coal Company's non-compliance with the Cessation Order or Notice of Violation.

2. This Temporary Restraining Order is issued on the basis of a finding of the Court that irreparable injury will be sustained by Hidden Valley Coal Company if the Cessation Order goes into effect. Said injury would be irreparable in that Hidden Valley Coal Company will be assessed \$ 750.00 per day in civil penalties for a 30-day period and will incur other enforcement action pending the resolution of its appeal before this Court, which appeal directly addresses and challenges the Defendants' abatement orders and Notice of Violation at the Emery County mine site. Since the Plaintiff has already commenced an appeal in this Court to challenge the aforementioned abatement orders and Notice of Violation and the jurisdiction that the Defendants have to impose such orders, Plaintiff should not now be placed in the position of having its appeal rendered moot by being forced to either pay extreme penalties or to implement the Defendants' orders. The balance of equities favors preserving the *status quo* until such time as the Court can adjudicate the issues presented in the appeal.

3. The Court is further persuaded that the stay in enforcement will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

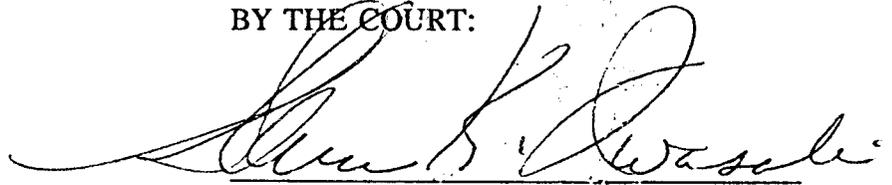
4. This Order shall expire on Monday, the 21st day of September, 1992, at the hour of 3³⁵ P.m.

5. IT IF FURTHER ORDERED, ADJUDGED AND DECREED that Defendants be and appear before this Court on Wed, the 23 day of September, 1992, at the hour of 9:30 A.m., Salt Lake City, Utah, before the Honorable Terasaki

_____, District Judge, and then and there show cause, if any they have, why a preliminary injunction should not be issued, incorporating the terms of the Restraining Order above during the pendency of this action.

ENTERED at Salt Lake City, Utah, this 11th day of September, 1992 at the hour of 3³⁵ P..m.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Leslie A. Lewis", written over a faint circular stamp.

~~JUDGE LESLIE A. LEWIS~~

PETER STIRBA (Bar No. 3118)
STIRBA & HATHAWAY
Attorneys for Plaintiff
Hidden Valley Coal Company
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	PLAINTIFF HIDDEN VALLEY
v.	:	COAL COMPANY'S MOTION
	:	FOR A TEMPORARY
	:	RESTRAINING ORDER
the UTAH BOARD OF OIL, GAS &	:	
MINING and the UTAH DIVISION	:	Case No. 920904813CV
OF OIL, GAS & MINING,	:	
Defendants.	:	Judge Leslie A. Lewis

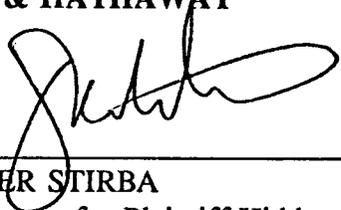
Plaintiff Hidden Valley Coal Company hereby moves the Court for a Temporary Restraining Order, ordering the Defendants, their officers, agents, employees, representatives, and all persons acting in concert with the Defendants, from enforcing, implementing or acting upon in any way a Cessation Order, No. C 92-26-1-2, issued by the Defendants by certified mail on September 1, 1992 or a Notice of Violation, issued by Defendants on January 21, 1992 until the resolution of *Hidden Valley Coal Company v. The Utah Board of Oil Gas and Mining, et. al.*, Case No. 920904813CV, currently pending before this Court. This motion is based upon the Affidavit of Lee Edmonson and the pleadings herein, which establish that Plaintiff Hidden

Valley Coal Company will sustain immediate and irreparable injury, loss and damage of \$ 750.00 per day in the event that Defendants enforce any fine, penalty or civil remedy implicated by the Cessation Order dated September 1, 1992.

Dated this 14th day of September, 1992.

STIRBA & HATHAWAY

BY: _____


PETER STIRBA
Attorneys for Plaintiff Hidden Valley
Coal Company

CERTIFICATE OF DELIVERY

I hereby certify that on this 11th day of September, 1992, a true and correct copy of the foregoing PLAINTIFF HIDDEN VALLEY COAL COMPANY'S MOTION FOR A TEMPORARY RESTRAINING ORDER was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants Attorney General
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Jan Brown, Docket Secretary
Utah Board of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Dr. Dianne R. Nielson, Director
Utah Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Denise Dragoo
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151



k/m/hvc-tro.mot

PETER STIRBA (Bar No. 3118)
STIRBA & HATHAWAY
Attorneys for Plaintiff
Hidden Valley Coal Company
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	AFFIDAVIT OF LEE
	:	EDMONSON
v.	:	
the UTAH BOARD OF OIL, GAS & MINING and the UTAH DIVISION OF OIL, GAS & MINING,	:	Case No. 920904813CV
Defendants.	:	Judge Leslie A. Lewis

The undersigned, Lee Edmonson, being duly sworn under oath, deposes and states as follows:

1. I am the Manager of Planning and Regulatory Affairs of Hidden Valley Coal Company.
2. I am aware of the operations of Hidden Valley Coal Company's mine site located in Emery County, Utah.

3. On August 27, 1992, Hidden Valley Coal Company filed a Complaint in the Third Judicial District Court for the State of Utah for the purpose of obtaining judicial review and appealing the Order of the Utah Board of Oil, Gas and Mining under Utah Code Ann. § 40-10-30 (1986).

4. On September 1, 1992, the Utah Board of Oil, Gas and Mining issued a Cessation Order to Hidden Valley Coal Company relating to abatement action at the Emery County mine site. *See* Cessation Order, attached hereto as Exhibit "A."

5. I received this Cessation Order on September 3, 1992.

6. The Cessation Order names CalMat of Arizona as the operator/permittee of the Emery County mine site. This is incorrect. Hidden Valley Coal Company is the operator and permittee of the Emery County Mine Site. Nevertheless, the Cessation Order purports to order abatement action at the Emery County mine site.

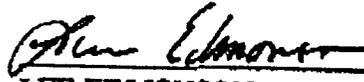
7. On information and belief, Hidden Valley Coal Company will be assessed \$ 750.00 per day in civil penalties for each day after September 10, 1992 that the Cessation Order is not stayed.

8. Hidden Valley Coal Company has appealed the issues which are the subject of the Cessation Order.

9. If a \$ 750.00 per day penalty accrues during the time that Hidden Valley Coal Company pursues its appeal, it will be irreparably harmed.

10. If Hidden Valley Coal Company avoids the \$ 750.00 per day penalty by taking the abatement action, Hidden Valley Coal's appeal of this exact order will be rendered meaningless and inconsequential.
11. The abatement action has already been stayed from the date of issuance of the Notice of Violation in January of this year until the present.
12. A stay of abatement action pending judicial review will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.
13. The condition which is the subject of the Notice of Violation and the Cessation Order has existed for years.
14. Hidden Valley Coal Company will be irreparably harmed to the extent of \$ 750.00 per day unless the Cessation Order is stayed pending the outcome of its appeal of the basis on which such abatement action is ordered.

Dated this 10th day of September, 1992.


LEE EDMONSON

STATE OF)
)
) ss.
COUNTY OF)

I, Lee Edmonson, being first duly sworn, hereby state that I have read the foregoing
AFFIDAVIT OF LEE EDMONSON and that the same is true to the best of my knowledge,
information and belief.

Lee Edmonson
LEE EDMONSON

Subscribed and sworn to before me this 10th day of September, 1992.



Carolyn A. Taylor
NOTARY PUBLIC

*Commission Expires:
January 24, 1993*

CERTIFICATE OF DELIVERY

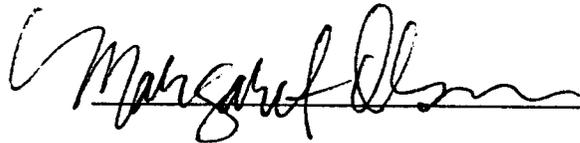
I hereby certify that on this 11th day of September, 1992, a true and correct copy of the foregoing AFFIDAVIT OF LEE EDMONSON was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants Attorney General
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Jan Brown, Docket Secretary
Utah Board of Oil, Gas & Mining
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Salt Lake City, Utah 84180

Dr. Dianne R. Nielson, Director
Utah Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Denise Drago
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151



k/m/hvc-tro.aff

EXHIBIT "A"

Received
9-3-92
P.E.



STATE OF UTAH
NATURAL RESOURCES
Division of Oil, Gas & Mining

3 Third Center • Suite 350 • Salt Lake City, UT 84130-1203 • 801-539-5340

Page 1 of 3

NO. C 92-26-1-2

cessation order

To the following Permittee or Operator:

Name CAL MAT CO.

Mine HIDDEN VALLEY Surface Underground Other

County EMERY State UT Telephone (602) 254-8465

Mailing Address 1801 EAST UNIVERSITY DRIVE, PHOENIX AZ 85034

State Permit No. ACT/015/007

Ownership Category State Federal Fee Mixed

Date of Inspection NOVEMBER 20, 1991

Time of Inspection 8 a.m. p.m. to 3 a.m. p.m.

Operator Name (other than Permittee) LEN EDMONSON

Mailing Address 1801 E UNIVERSITY DR. PHOENIX AZ 85034

Under authority of the Utah Coal Mining & Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated, 1953, the undersigned, authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found that a Cessation Order must be issued with respect to each of the conditions, practices or violations listed in the attachment(s). This order constitutes a separate Cessation Order for each condition, practice or violation listed.

In accordance with Section 40-10-22, Utah Code Annotated, you are ordered to cease immediately the operations described in the attachment(s) and to perform the affirmative obligations described in the attachment(s) within the designated time for abatement. Reclamation operations not directly the subject of this order shall continue while this order is in effect. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that this order does does not require cessation of mining expressly or in practical effect. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This order shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the Division of Oil, Gas & Mining.

CERTIFIED RETURN RECEIPT P 074 979 280

Date of ~~copy~~/mailing SEPTEMBER 1, 1992 Time of ~~copy~~/mailing 3:00 a.m. p.m.

LEN EDMONSON
Permittee/Operator representative

Title

Signature

PAMELA GRUBAUGH-LITTEG
Division of Oil, Gas & Mining representative

PERMIT SUPERVISOR
Title

Pamela Grubaug-Littig
Signature

#20
Identification Number

SEE REVERSE SIDE

WHITE-DOGM YELLOW-OPERATOR PINK-OGM GOLDENROD-NOV FILE
CC: UNITED STATES CORP CO
DOGM/CO-1

an equal opportunity employer

Rev. 5/92



CESSATION ORDER NO. C 92-26-1-2

Violation No. 1 of 2

Nature of condition, practice or violation

FAILURE TO ABATE AFOREMENTIONED VIOLATION
FAILURE TO MAINTAIN DIVERSIONS TO BE STABLE
FAILURE TO MINIMIZE EROSION TO THE EXTENT POSSIBLE

Provisions of act, regulations or permit violated

DCA et sec 40-10-20 (8)
R645-400-314
R645-301-742.312.1
R645-301-742.313

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. 1 OR 2 included in Notice of Violation No. N91-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE, COVERED BY BOND, AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

SUBMIT A COMPLETE AND ACCURATE PLAN TO REPAIR AND CONTROL EROSION

WHITE-DOGMI YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE



CESSATION ORDER NO: C 97-26-1-2

Violation No. 2 of 2

Nature of condition, practice or violation

- FAILURE TO ABATE AFOREMENTIONED VIOLATION
- FAILURE TO CLEARLY MARK WITH PERIMETER MARKERS ALL DISTURBED AREAS
- FAILURE TO SEED AND REVEGETATE ALL DISTURBED AREAS

Provisions of act, regulations or permit violated

UCA et sec 40-10-20 (8)

R645-301-521.251

R645-301-354

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. 2 OF 2 included in Notice of Violation No. N91-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE COVERED BY BOND AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

- INSTALL PERIMETER MARKERS TO CLEARLY MARK ALL THE DISTURBED AREAS.
- SEED THE SPECIFIED DISTURBED AREAS NOT PREVIOUSLY SEEDED
- RESEED THE ROAD
- SEEDING AND RESEEDING TO BE COMPLETED AS SPECIFIED IN THE MINING AND RECLAMATION PLAN

PETER STIRBA (Bar No. 3118)
STIRBA & HATHAWAY
Attorneys for Plaintiff
Hidden Valley Coal Company
215 South State Street, Suite 1150
Salt Lake City, UT 84111
Telephone: (801) 364-8300

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

HIDDEN VALLEY COAL COMPANY	:	
Plaintiff,	:	PLAINTIFF HIDDEN VALLEY
	:	COAL COMPANY'S
v.	:	MEMORANDUM IN SUPPORT
	:	OF ITS MOTION FOR A
the UTAH BOARD OF OIL, GAS &	:	TEMPORARY RESTRAINING
MINING and the UTAH DIVISION	:	ORDER
OF OIL, GAS & MINING,	:	Case No. 920904813CV
Defendants.	:	Judge Leslie A. Lewis

Pursuant to Utah Code of Judicial Administration Rule 4-501 and Utah R. Civ. P. 65A(b), the Plaintiff Hidden Valley Coal Company, by and through its attorney of record Peter Stirba, respectfully submits its Memorandum in Support of its Motion for a Temporary Restraining Order.

STATEMENT OF FACTS

1. Plaintiff Hidden Valley Coal Company ("HVCC") is a Utah corporation which owns a coal property in Emery County, Utah, hereinafter referred to as the "Mine Site."

2. Defendants the Utah Board of Oil Gas and Mining and the Utah Division of Oil, Gas & Mining are departments of the Utah Department of Natural Resources, created and authorized under Utah Code Ann. § 40-6-1 *et. seq.*

3. On January 21, 1992, the Defendants issued a Notice of Violation to Plaintiff HVCC, ordering certain abatement action to be taken at the Mine Site. *See* Notice of Violation, attached hereto as Exhibit "A."

4. On February 12, 1992, the Plaintiff HVCC petitioned the Defendants for temporary relief from taking the abatement action ordered in the Notice of Violation pending an administrative appeal.

5. On February 14, 1992, the Defendants granted the Petition, extending the time for abatement to thirty days following the Board's entry of its written decision in the pending review proceedings. *See* Order #1, attached hereto as Exhibit "B."

6. On July 30, 1992, the Defendant Board of Oil, Gas and Mining issued an order upholding the Division with respect to the issuance of the Notice of Violation. *See* Order #2, attached hereto as Exhibit "C."

7. Under the terms of the first Order, the deadline for Plaintiff HVCC to take abatement action became thirty days after the entry of the second Order, or August 31, 1992.

8. On August 27, 1992, the Plaintiff HVCC filed this appeal for the purpose of obtaining judicial review and appealing the second order of the Defendants under Utah Code Ann. § 40-10-30 (1986).

9. On September 1, 1992, the Defendant Board of Oil, Gas and Mining issued a Cessation Order to Plaintiff HVCC relating to abatement action at the Mine Site. *See* Cessation Order, attached hereto as Exhibit "D." This Cessation Order was received by Plaintiff HVCC on September 3, 1992.

10. The Cessation Order is flawed on its face because it fails to name the correct permittee or operator and does not give a time for compliance as required by Utah Code Ann. § 40-10-22(1)(e) (1981). *See* Affidavit of Lee Edmonson, filed and served herewith. Nevertheless, the Cessation Order purports to order abatement action at the Mine Site.

11. On September 3, 1992, the Plaintiff HVCC contacted the Defendant Board of Oil, Gas and Mining asking the Chairman James W. Carter to issue an emergency order preserving the *status quo* of the parties pending Hidden Valley's appeal with the district court.

12. On September 9, 1992, after a lengthy deliberation period, the Defendant Board of Oil, Gas and Mining issued a Memorandum Decision and Order granting Plaintiff HVCC's request to stay the cessation order until September 10, 1992 "in order to allow [Plaintiff HVCC] to seek appropriate judicial remedies or commence abatement . . ." *See* Memorandum Decision and Order, attached hereto as Exhibit "E."

13. Plaintiff HVCC has given notice of its Motion for a Temporary Restraining Order to Defendants.

14. The Plaintiff HVCC will be assessed \$ 750.00 per day in civil penalties for each day after September 10, 1992 that the Cessation Order is not stayed. *See* Memorandum Decision and Order, attached hereto as Exhibit "E," and Utah Admin. Code 645-400-420.

15. The Plaintiff HVCC is appealing the issues which are the subject of the Cessation Order. If a \$ 750.00 per day penalty accrues during the time that Plaintiff HVCC pursues its appeal, it will be irreparably harmed. *See* Affidavit of Lee Edmonson, filed and served herewith.

16. If Plaintiff HVCC avoids the \$ 750.00 per day penalty by taking the abatement action, this appeal will be rendered substantively moot. The subject matter of the appeal is the exact subject matter of the Cessation Order.

17. The injury to the Defendants will be insignificant. The abatement action has already been stayed from the date of the Notice of Violation in January of this year until the present. *See* Order #1, attached hereto as Exhibit "B." The stay will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources. *See* Affidavit of Lee Edmonson, filed and served herewith.

18. Furthermore, on February 14, 1992, counsel for Defendants stipulated that no adverse effects to the health or safety of the public and no significant imminent environmental harm to land, air or water resources is present or likely at the Mine Site. *See* Order #1, attached hereto as Exhibit "B."

19. In fact, no emergency situation of any kind is present at the Mine Site. The condition which is the subject of the Notice of Violation and the Cessation Order has existed for years. *See* Affidavit of Lee Edmonson, filed and served herewith.

20. The Plaintiff HVCC will be irreparably harmed to the extent of \$ 750.00 per day unless the Cessation Order is stayed pending the outcome of its appeal of the basis on which such abatement action is ordered. *See* Affidavit of Lee Edmonson, filed and served herewith.

ARGUMENT

A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

- (1) The applicant will suffer irreparable harm unless the order or injunction issues;
- (2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;
- (3) The order or injunction, if issued, would not be adverse to the public interest; and
- (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

Utah R. Civ. P. 65A(e). A temporary restraining order should issue in this case because Plaintiff HVCC has made the necessary showing and will be substantially and irreparably harmed by the action Defendants threaten to take against them.

A. The Plaintiff Hidden Valley Coal Company Will Suffer Substantial and Irreparable Harm if the Cessation Order is Not Stayed.

The Plaintiff HVCC will be assessed \$ 750.00 per day in civil penalties for each after September 10, 1992 that the Cessation Order is not stayed for a 30-day period and such other action which the Defendants may take to enforce the Cessation Order. *See* Memorandum Decision and Order, attached hereto as Exhibit "F," and Utah Admin. Code 645-401-420, 430. Plaintiff HVCC should not have to take the abatement action which is the subject of its pending appeal before the appeal is resolved. Otherwise, the entire appeal is rendered moot because the abatement action would be required *now* instead of *after* HVCC has exercised its right to judicial review under Utah Code Ann. § 40-10-30 (1986). A civil penalty of \$750.00 per day and action by the Defendants to enforce the Cessation Order under Utah Admin. Code 645-401-430 will cause Plaintiff HVCC irreparable harm. *See* Affidavit of Lee Edmonson, filed and served herewith. Furthermore, because of certain immunities of the Defendants, Plaintiff HVCC will be unable to recoup these penalties if it ultimately prevails in its appeal.

B. The Substantial Economic Injury to Plaintiff Hidden Valley Coal Company Outweighs Any Negligible Injury to the State.

The threatened injury to Plaintiff HVCC far outweighs any insignificant intangible damage to the Defendants. The Defendants will not be damaged at all. The Notice of Violation has already been stayed since January 21 of this year. The Defendants' counsel stipulated that no public health or safety issues are implicated and no environmental harm to land, air or water

will occur. *See* Order #1, attached hereto as Exhibit "B." The condition Defendants want abated has existed for years. *See* Affidavit of Lee Edmonson, filed and served herewith.

In light of the immediate, substantial and irreparable damage which Plaintiff HVCC will incur, the harm to the Defendants is negligible. The only way this harm can be prevented is if the Court issues a temporary restraining order preventing the Defendants from enforcing, implementing or acting upon in any way the Cessation Order issued by the Defendants on September 1, 1992 until the resolution of the appeal currently pending before this Court.

C. The Public Interest is Unaffected by a Temporary Restraining Order in This Case.

There are no issues of public policy implicated in this case. There have been no dangerous environmental conditions ever reported or alleged. *See* Affidavit of Lee Edmonson, filed and served herewith. As established above, the Defendants stipulated to this fact. *See* Section "B," *supra* and Order #1, attached hereto as Exhibit "B." The Mine Site has existed in its present state at least since January, 1992 when the Defendants issued their Notice of Violation. A ten day temporary restraining order will not cause or worsen any condition that has not been present all year.

D. Hidden Valley Coal Company Presented Serious Issues in Its Appeal Which Should Be the Subject of Further Litigation.

Plaintiff HVCC filed its appeal on August 27, 1992, three days before the Board's Order extending the time for abatement ran out. Plaintiff HVCC has a statutory right to judicial review of the Defendants' finding that it is subject to the jurisdiction of the statutes and must take the

abatement action ordered. *See* Utah Code Ann. § 40-10-30 (1986). This appeal is proper, in good faith and should be given full consideration by the Court. At this date, Plaintiff HVCC should not be forced to go ahead and make the changes which are the subject of a pending good faith appeal. Utah Admin. Code 645-401-422 contemplates that once penalty review proceedings are initiated and the Court suspends abatement obligations, daily assessments will not be made until entry of a final order by the Court. In order to preserve the integrity of Plaintiff HVCC's appeal, the Court should stay the Cessation Order of September 1, 1992 until the resolution of this appeal. These are all issues which deserve the full attention of the Court. Given this showing, the fourth requirement for a temporary restraining order is satisfied.

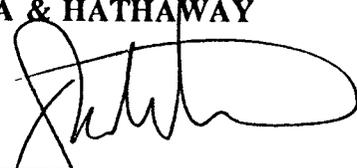
CONCLUSION

Plaintiff Hidden Valley Coal Company meets all statutory requirements for the issuance of a temporary restraining order. It has demonstrated immediate, irreparable economic harm to itself, along with a lack of harm to the Defendants and a lack of public policy concerns. In addition, the Plaintiff made a preliminary showing sufficient to establish a substantial likelihood that it will prevail on its appeal, and that the Court will find as a matter of law that the Notice of Violation and Cessation Order were improperly and illegally issued.

Dated this 11th day of September, 1992.

STIRBA & HATHAWAY

BY: _____


PETER STIRBA
Attorneys for Plaintiff Hidden Valley
Coal Company

CERTIFICATE OF DELIVERY

I hereby certify that on this 11th day of September, 1992, a true and correct copy of the foregoing PLAINTIFF HIDDEN VALLEY COAL COMPANY'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR A TEMPORARY RESTRAINING ORDER was hand delivered to the following:

William R. Richards
Thomas A. Mitchell
Assistants Attorney General
UTAH DIVISION OF OIL, GAS & MINING
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Jan Brown, Docket Secretary
Utah Board of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Dr. Dianne R. Nielson, Director
Utah Division of Oil, Gas & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Denise Dragoo
FABIAN & CLENDENIN
P.O. Box 510210
Salt Lake City, Utah 84151

A handwritten signature in cursive script, appearing to read "Margaret Olson", written over a horizontal line.

k\m\hvc-tro.mem

EXHIBIT "A"



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

3 Triad Center • Suite 350 • Salt Lake City, UT 84119-1203 • 801-533-5340

NO. N 92-25-1-1

notice of violation

To the following Permittee or Operator:

Name HIDDEN VALLEY COAL CO.

Mine HIDDEN VALLEY

County EMERY

State UTAH

Surface

Underground

Other

Telephone 602-254-8465

Mailing Address 1801 UNIVERSITY DRIVE

State Permit No. ACT 1015 1007

Ownership Category 950 State

Federal

Fee

Mixed

Date of inspection 1/22/92

Time of inspection 11:30

a.m.

p.m.

a.m.

p.m.

Operator Name (other than Permittee) LEE EDMONSON

Mailing Address 1801 E. UNIVERSITY DRIVE PHOENIX, ARIZ. 85034

Under authority of the Utah Coal Mining and Reclamation Act, Section 40-10-1 et seq., Utah Code Annotated, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found violation(s) of the act, regulations or required permit condition(s) listed in attachment(s). This notice constitutes a separate Notice of Violation for each violation listed.

You must abate each of these violations within the designated abatement time. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that cessation of mining is is not expressly or in practical effect required by this notice. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This notice shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas & Mining. Time for abatement may be extended by authorized representative for good cause, if a request is made within a reasonable time before the end of abatement period.

Date of service/ mailing 1/21/92

Time of service/ mailing 10:35 a.m. p.m.

Permittee/Operator representative Paul D. Knapp

Title Hydrogeologist

Signature Paul D. Knapp

Division of Oil, Gas & Mining representative Thomas Munson

Title Reclamation Specialist III

Signature Thomas Munson

Identification Number #25

SEE REVERSE SIDE

WHITE-DOGM YELLOW-OSM PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

DOGM/NOV.1

an equal opportunity employer



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

NOTICE OF VIOLATION NO. N 92-25-1-1

Violation No. 1 of 1

Nature of violation

*Disturbing land within 100 feet of Live
Creek, a perennial stream, without authorization
from the Division.*

Provisions of act, regulations or permit violated

R 645-301-731.610 STREAM BUFFER ZONE

Portion of operation to which notice applies

Pad outslope to Live Creek

Remedial action required (including any interim steps)

- 1) Comply with R 645-301-731.611*
- 2) Comply with R 645-301-731.620*

*Submit an amendment to the PAP to demonstrate
compliance with the above mentioned Rules.*

Abatement time (including interim steps)

5:00 PM, FEBRUARY 21, 1992

EXHIBIT "B"

BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF NOTICE OF	:	ORDER GRANTING
VIOLATION N92-25-1-1,	:	HIDDEN VALLEY COAL
HIDDEN VALLEY MINE,	:	COMPANY'S PETITION FOR
EMERY COUNTY, UTAH	:	TEMPORARY RELIEF
	:	
	:	CAUSE NO. ACT/015/007

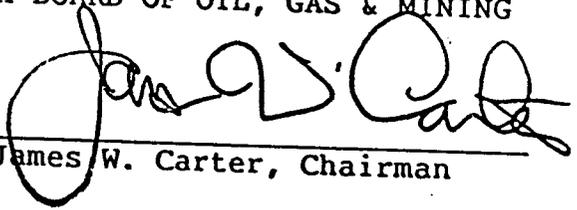
On February 10, 1992, Hidden Valley Coal Company ("Hidden Valley"), by and through its counsel of record, petitioned the Utah Board of Oil, Gas & Mining ("Board") for temporary relief concerning abatement of Notice of Violation N92-25-1-1 ("NOV"). Hidden Valley has appealed the fact of this violation to the Board challenging, among other things, the jurisdiction of the Division of Oil, Gas & Mining ("DOGM") to issue the NOV. A hearing on this matter is set before the Board on March 25, 1992. By conference call between the Chairman of the Board and the parties on Friday, February 14, 1992, counsel for DOGM stipulated to a grant of temporary relief and both parties agreed, on information and belief, that the stay of enforcement of the NOV will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources.

Based upon a review of Hidden Valley's petition for temporary relief, the pleadings filed in this matter, the stipulation of both parties to temporary relief, pursuant to Utah Code Ann. § 40-10-22(3)(c), the Board grants Hidden Valley's petition for temporary relief and will extend the abatement period for the NOV from February 21, 1992 to thirty days following the Board's entry of its written decision in the pending review proceedings.

ORDERED and ISSUED this 14th day of February, 1992.

UTAH BOARD OF OIL, GAS & MINING

BY:


James W. Carter, Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 1992, I caused to be mailed first class, postage prepaid, a true and correct copy of the foregoing Order Granting Hidden Valley Coal Company's Petition for Temporary Relief, Cause No. ACT/015/007, to:

Dr. Dianne R. Nielson
Director
Utah Division of Oil, Gas & Mining
355 West North Temple
Suite 350, 3 Triad Center
Salt Lake City, Utah 84180

Denise A. Drago, Esq.
Attorney for Hidden Valley Coal Company
P.O. Box 510210
Salt Lake City, Utah 84151

Lynda Jensen

DAD:021392c

EXHIBIT "C"

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

RECEIVED

JUL 31 1992

STIRBA & HATHAWAY

---oo0oo---

IN THE MATTER OF NOTICE OF
VIOLATION N91-26-8-2, HIDDEN
VALLEY MINE, EMERY COUNTY,
UTAH

:
:
:

ORDER
DOCKET NO. 92-005
CAUSE NO. ACT/015/007

---oo0oo---

On June 30, 1992, the above entitled matter came before the Hearing Examiner, Chairman James W. Carter. Representing the Board of Oil, Gas and Mining's Examiner ("Examiner") was Thomas A. Mitchell, Esq., Assistant Attorney General. Representing the Division of Oil, Gas and Mining ("DOGM") was William R. Richards, Esq., Assistant Attorney General, and representing the Respondent Hidden Valley Mine was Peter Stirba, Esq. The Board considered the Examiner's recommended Findings of Fact and Order at their regularly scheduled hearing on July 22, 1992 and adopted it with the modifications contained herein.

FINDINGS OF FACT

1. NOV 91-26-8-2, parts one and two, was issued on November 20, 1991. There was an assessment conference and fact of violations hearing resulting in the final Division assessment on December 20, 1991.

2. The Petitioner timely appealed the final Division assessment and findings and paid the total assessment in the

amount of \$760.00 for part one of two, and \$460.00 for part two of two into the Division.

3. The Respondent, Hidden Valley Mine, is subject to the jurisdiction of the Board of Oil, Gas and Mining pursuant to Utah Statute, Utah Code Ann. § 40-10-3 (1953, as amended).

4. On September 7, 1979, Hidden Valley's predecessor, Soldier Creek Coal Company (Soldier Creek), submitted a Mining and Reclamation Plan for the land which is the subject of these enforcement proceedings. In that plan Soldier Creek stated that it intended to develop an underground coal mine by June of 1981 which was intended to produce approximately 500,000 tons per year for 40 years.

5. On April 14, 1980, the Division of Oil, Gas and Mining approved Soldier Creek's Mining and Reclamation Plan pursuant to the State Coal Program's interim regulations.

6. On April 17, 1980, surface mining operations commenced at the Hidden Valley Mine pursuant to the approved Mining and Reclamation Plan. These operations included the construction and paving of a 2.5 mile road; construction of an access road to two portal areas where pads were constructed adjacent to coal seams; construction of portal entry face ups; top soil removal from the surface; sediment pond construction and installation of drainage diversions.

7. On January 23, 1981, the Utah State Coal Program was approved by the federal government with Utah as a primacy state, and the Utah Permanent Program Regulations became effective.

8. On March 23, 1981, Soldier Creek informed the Division for the first time that the Hidden Valley mine would temporarily suspend operations.

9. By letter dated May 24, 1985, the Division notified Soldier Creek that it must elect to either permit the Hidden Valley Mine under the Permanent Program Regulations or reclaim the mine in accordance with the approved plan and Permanent Program Regulations.

10. After September 15, 1985, Hidden Valley elected to cease mining operations and reclaim the mine site. In May, 1986, the Respondent filed a Reclamation Plan incorporating the Permanent Program reclamation standards, which plan was approved by the Division.

11. Reclamation of the mine site was undertaken by Respondent, and Phase I bond release was authorized by the Division on May 24, 1988.

12. Subsequent to Phase I bond release, the Respondent has failed to comply with the Permanent Program standards and with the approved Reclamation Plan by failing to adequately construct and maintain erosion control structures on the outslope of the access haul road.

13. The Respondent has failed to comply with the Permanent Program standards and the approved Reclamation Plan by having failed to seed the disturbed area constituting the outslopes of the access road.

14. The Respondent has failed to comply with the Permanent Program standards and the approved Reclamation Plan by having failed to place disturbed area boundary markers at the toe of the slope of the disturbed area below the access road, and instead has placed them at the edge of the road above the disturbed area.

15. The violations which are the subject of this enforcement proceeding are continuing violations, and constitute a current and ongoing basis for enforcement.

16. The Respondent has not changed its position or incurred any detriment in reliance upon any act or statement of the Division or its inspection and permitting staff.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the Respondent and the Hidden Valley Mine pursuant to Utah Code Ann. § 40-10-3. This provision of the Utah Coal Statute provides that an operator comes within the jurisdiction of the Board and the Division when the operator mines or intends to mine 250 tons of coal within any 12-month period.

2. The intent of an operator to mine is to be determined by an objective standard based upon the acts and representations of the operator during relevant time periods. The Board concludes that Hidden Valley possessed the requisite intent to conduct mining activities, subjecting itself to the jurisdiction of the Utah Coal Statute.

3. The Board concludes that the Permanent Program standards apply to the Respondent because the operator neither permanently ceased operations nor abandoned the intent to mine prior to the Permanent Program becoming effective, and because Hidden Valley specifically agreed to application of the Permanent Program rules in its 1986 Reclamation Plan.

4. The Board concludes the Division has made a prima facie case to support the issuance of the NOV's which are the subject of this enforcement action. The Board further concludes that Hidden Valley has not carried its burden of proof to rebut the Division's prima facie case.

5. The Board concludes that the statute of limitations provision contained in the Utah Mined Land Reclamation Act is not incorporated by reference under Utah Code Ann. § 40-10-1 et seq. because it is inconsistent with the approved federal program as well as less stringent. Further, the Board concludes that even if there were an applicable statute of limitations, the statute has not begun to run because the violations are continuing.

6. The Board concludes that the Respondent has not proven the elements of estoppel necessary to avail itself of that affirmative defense.

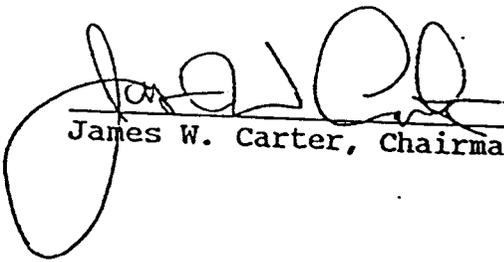
ORDER

1. The Division's action in issuing the NOV subject to this enforcement action should be upheld.

2. The Division's penalty assessments are upheld as to all parts of the NOV, with the exception of that part relating to the placement of the disturbed area boundary markers, where the negligence points should be reduced to zero. Final assessment for part two of two of the violation is reduced from \$460.00 to \$330.00.

ISSUED AND SIGNED this 30th day of July, 1992.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


James W. Carter, Chairman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing ORDER in Docket No. 92-005, Cause No. ACT/015/007 to be mailed by certified mail, postage prepaid, on the 30th day of July, 1992, to the following:

Peter Stirba
Stirba & Hathaway
215 South State #1150
Salt Lake City, Utah 84111

Hand Delivered to:

William R. Richards
Assistant Attorney General
Utah Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

Lynda Jensen

EXHIBIT "D"

Received
9-3-92
P.E.



STATE OF UTAH
NATURAL RESOURCES
Division of Oil, Gas & Mining

311ad Center • Suite 350 • Salt Lake City, UT 84130-1203 • 801-538-5340

NO. C 92-26-1-2

cessation order

To the following Permittee or Operator:

Name CAL MAT CO.

Mine HIDDEY VALLEY

Surface Underground Other

County EMERY

State UT

Telephone (602) 254-8465

Mailing Address 1801 EAST UNIVERSITY DRIVE, PHOENIX AZ 85034

State Permit No. ACT/015/007

Ownership Category State Federal Fee Mixed

Date of Inspection NOVEMBER 20, 1991

Time of Inspection 8 a.m. p.m. to 3 a.m. p.m.

Operator Name (other than Permittee) LEE EDMONSON

Mailing Address 1801 E UNIVERSITY DR. PHOENIX AZ 85034

Under authority of the Utah Coal Mining & Reclamation Act, Section 40-10-1 of sec. Utah Code Annotated, 1953, the undersigned authorized representative of the Division of Oil, Gas & Mining has conducted an inspection of above mine on above date and has found that a Cessation Order must be issued with respect to each of the conditions, practices or violations listed in the attachment(s). This order constitutes a separate Cessation Order for each condition, practice or violation listed.

In accordance with Section 40-10-22, Utah Code Annotated, you are ordered to cease immediately the operations described in the attachment(s) and to perform the affirmative obligations described in the attachment(s) within the designated time for abatement. Reclamation operations not directly the subject of this order shall continue while this order is in effect. You are responsible for doing all work in a safe and workmanlike manner.

The undersigned representative finds that this order does does not require cessation of mining expressly or in practical effect. For this purpose, "mining" means extracting coal from the earth or a waste pile, and transporting it within or from the mine site.

This order shall remain in effect until it expires as provided on reverse side of this form, or is modified, terminated or vacated by written notice of an authorized representative of the Division of Oil, Gas & Mining.

CERTIFIED RETURN RECEIPT P 074 979 280

Date of ~~RECEIPT~~/mailing SEPTEMBER 1, 1992

Time of ~~RECEIPT~~/mailing 3:00 a.m. p.m.

LEE EDMONSON
Permittee/Operator representative

Title

Signature

PAMELA GRUBAUGH-LITTIG
Division of Oil, Gas & Mining representative

PERMIT SUPERVISOR

Title

Signature

#20

Identification Number

SEE REVERSE SIDE

WHITE-OSGM YELLOW-OPERATOR PINK-OSGM GOLDENROD-NOV/RE
CC: UNITED STATES CORP CO

DOG/CO-1

an equal opportunity employer

Rev. 5/92



UTAH
NATURAL RESOURCES
Oil, Gas & Mining

CESSATION ORDER NO. C 92-26-1-2

Violation No. 1 of 2

Nature of condition, practice or violation

FAILURE TO ABATE AFOREMENTIONED VIOLATION
FAILURE TO MAINTAIN DIVERSIONS TO BE STABLE
FAILURE TO MINIMIZE EROSION TO THE EXTENT POSSIBLE

Provisions of act, regulations or permit violated

DCA et sec 40-10-20 (8)
R645-400-314
R645-301-742.312.1
R645-301-742.313

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. 1 OF 2 included in Notice of Violation No. N91-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE, COVERED BY BOND, AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

SUBMIT A COMPLETE AND ACCURATE PLAN TO REPAIR AND CONTROL EROSION



UTAH
NATURAL RESOURCES
OR. GOVERNMENT

CESSATION ORDER NO: C 92-26-1-2

Violation No. 2 of 2

Nature of condition, practice or violation

FAILURE TO ABATE AFOREMENTIONED VIOLATION

FAILURE TO CLEARLY MARK WITH PERIMETER MARKERS ALL DISTURBED AREAS

FAILURE TO SEED AND REVEGETATE ALL DISTURBED AREAS

Provisions of act, regulations or permit violated

UCA et nec 40-10-20 (8)

R645-301-521, 251

R645-301-354

Check appropriate box

- Condition, practice or violation is creating an imminent danger to health or safety of the public.
- Permittee/Operator is/has been conducting mining activities without a permit.
- Condition, practice or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.
- Permittee or Operator has failed to abate Violation(s) No. 2 OF 2 included in Notice of Violation No. 92-26-8-2 within time for abatement originally fixed or subsequently extended.

Operation(s) to be ceased immediately N/A

MINE IS IN A RECLAMATION STAGE COVERED BY BOND AND NO MINING IS TAKING PLACE AT THIS MINE.

Affirmative obligation(s) and abatement time (if applicable)

INSTALL PERIMETER MARKERS TO CLEARLY MARK ALL THE DISTURBED AREAS.

SEED THE SPECIFIED DISTURBED AREAS NOT PREVIOUSLY SEEDED

RESEED THE ROAD

SEEDING AND RESEEDING TO BE COMPLETED AS SPECIFIED IN THE MINING AND RECLAMATION PLAN

WHITE-DOG M YELLOW-OS M PINK-PERMITTEE/OPERATOR GOLDENROD-NOV FILE

EXHIBIT "E"

BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF NOTICE OF : MEMORANDUM DECISION AND
VIOLATION N91-26-8-2, ORDER
HIDDEN VALLEY MINE, :
EMERY COUNTY, UTAH : Cause No. ACT/015/007

Petitioner Hidden Valley Coal Company seeks an emergency order of the Board staying "all proceedings, including but not limited to the cessation order, NO. C 92-26-1-2, issued by the Division of Oil, Gas and Mining by certified mail on September 1, 1992...", until resolution of a pending civil action in the Third Judicial District Court appealing a Board order issued July 30, 1992. The Board had previously granted a Petition for Temporary Relief on February 14, 1992, extending Petitioner's time for abatement of the underlying Notice of Violation (NOV) to a date 30 days after entry of the Board's July 30th order. On August 31st, the NOV remained unabated and the Division, pursuant to its coal regulatory program rules, issued the subject Cessation Order (CO) on September 1. Petitioner filed a Petition for Review of Administrative Action with the Utah Supreme Court and a Complaint with the Third Judicial District Court on August 28, 1992 seeking reversal of the Board's July 30 order.

The rules governing the issuance of NOV's and CO's are couched in mandatory, rather than discretionary, terms. When the Board's order of Temporary Relief expired without the Board ordered abatement, the Division had no choice but to issue the CO. Rule

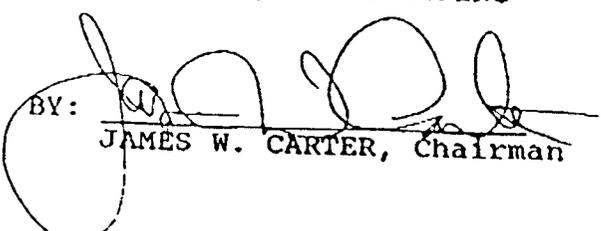
645-400-420 provides that, "a civil penalty of not less than \$750.00 will be assessed for each day during which..." the violation remains unabated. Rule 645-400-421 allows for temporary relief until issuance of a Board order. Rule 645-400-422 provides for Court ordered temporary relief "If the permittee initiates review proceedings under the State Program with respect to the violation,..."

Both the Utah Rules of Civil Procedure and the rules of the coal regulatory program provide the temporary relief Petitioner seeks. Once the Board's order was appealed, the Board could not amend the terms of the order to extend the time for abatement. The Board is loathe to contravene its own rules, but the Petitioner's request is one of first impression and, due to those circumstances, certain equitable considerations have arisen.

Based upon the law and circumstances, it is hereby ordered, adjudged and decreed that the Petitioner's request for Emergency Order staying the proceedings of the Division of Oil, Gas & Mining relating to cessation order CO92-26-1-2 and the accrual of penalties under that CO is granted for the period commencing September 1, 1992 and terminating at the close of business September 10, 1992 in order to allow Petitioner to seek appropriate judicial remedies or commence abatement pursuant to the terms of the Board's July 30, 1992 Order.

Dated this 9th day of September, 1992.

BOARD OF OIL, GAS & MINING

BY: 

JAMES W. CARTER, Chairman