

FINDINGS

1. On June 5, 1980, the State Division of Oil, Gas & Mining and the federal Office of Surface Mining made a joint inspection of Trail Mountain Mine and the Division found eight violations of the Interim Coal Mining Regulations.

2. On June 19, 1980, the Division cited Trail Mountain Mine for these violations and sent such citation along with recommended abatement measures to Mr. David Mills of the Fetterolf Group, by registered mail with copies to Mr. Tom Rice and Mr. Dan Hanna.

3. On June 27, 1980, the Board issued an order to show cause requesting a representative from Trail Mountain Mine to appear before the Board on July 22, 1980, and demonstrate why the operation should not be found in violation of the Interim Regulations.

4. On July 15, 1980, the Division of Oil, Gas & Mining issued two cessation orders at the Trail Mountain Mine for failure to abate violations found during the June 5, 1980, inspection and requested the operator to appear before the Board and Division on July 22, 1980, to show cause why these cessation orders should be abated or modified.

5. On July 22, 1980, the Board and Division held a hearing concerning the Trail Mountain Mine at which it was determined that (1) the cessation orders should be terminated by the Division; (2) the Trail Mountain Mine was in violation of the Interim Regulations on all counts; and (3) the Division was to develop a proposed assessment of civil penalties for the Board's consideration with respect to the violations.

6. On August 26, 1980, the Board issued an order finding Trail Mountain Mine in violation of the Interim regulations and requesting the operator to show cause why the Board should not assess a civil penalty in accordance with the proposed assessment set forth in that order on September 25, 1980.

7. Representatives at Trail Mountain Mine appeared at the Board's hearing on September 25, 1980, and challenged the Board's use of federal guidelines in establishing the proposed State civil penalties and otherwise challenged the assessment proceedings.

CONCLUSIONS OF LAW

1. In determining the amount of penalty, the Board followed the statutory criteria set forth at Section 40-10-20, UCA, 1953 as (1) the permittee's history of previous violations at the particular surface mining operation; (2) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; (3) whether the permittee was negligent; (4) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

2. Pursuant to the above criteria, the Board would assess the following penalty points and civil penalty:

Violation #	History	Seriousness		Negligence	Good Faith	Total	Civil Penalty
		POO	EOD				
#1-MC 717.14(e)	8	12	12	12	0	44	760
#2-MC 717.17	8	15	7	30	0	60	1,380
#3-MC717.17(a)	8	12	12	30	0	62	1,540
#4-MC 717.17 (j)(1)	8	10	12	12	0	42	680
#5-MC 717.17(j)	8	12	12	30	0	62	1,540
#6-MC 717.11	8	15	0	30	0	53	1,120
#7-MC 717.17 (B)(1)(v)	8	15	0	30	0	53	1,120
#8-MC 717.20(b)	8	12	8	30	0	58	1,300
						TOTAL	9,440

*POO - Probability of occurrence.

*EOD - Extent of damage.

3. Under Section 40-10-20(8) of the Act, any operator who fails to correct a violation for which a citation has been issued under Section 40-10-20(1) within the allotted abatement period must be assessed a mandatory civil penalty of \$750 per day of violation.

4. Pursuant to Section 40-10-20(8), the Board would assess the operator at least the following:

<u>Violation Number</u>	<u>Civil Penalty</u>
(7) MC 717.17(b)(1)(v)	\$ 750.00
(8) MC 717.20(b)	<u>750.00</u>
TOTAL	\$1,500.00

5. Certain procedural inadequacies during the assessment proceedings prevent the Board from fully implementing civil penalties for the cessation orders issued by the Division. The cessation orders were based upon certain notices of violations observed by State inspectors on June 5, 1980, and issued to the operator on June 19, 1980. While the citation listed the violations and abatement actions clearly, no time was assigned for the abatement of these violations. Therefore, the Division's cessation orders of July 15, 1980, were improperly issued under Section 40-10-20(8), UCA, which mandates a civil penalty only when a previously issued notice of violation is not corrected within the allotted abatement period.

ORDER

1. Due to the failure of the Division to specify abatement periods in Trail Mountains's notices of violation, the Board sets aside the cessation orders of July 15, 1980, and any proposed assessment resulting out of such orders.

2. The Board assesses a civil penalty of \$9,440.00 for the eight notices of violation issued by the Division at the Trail Mountain Mine.

3. The Board orders the operator to pay the civil penalty to the Division of Oil, Gas & Mining within 30 days of receipt of this order.

So ordered this 19th day of November, 1980.

BOARD OF OIL, GAS & MINING

