

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH

IN THE MATTER OF THE VIOLATION OF)		
BOARD ORDERS BY THE CO-OP MINING)	ORDER	
COMPANY AT THE CO-OP MINE, SECTION)	CAUSE NO's.	ACT/015/021
22, TOWNSHIP 16 SOUTH, RANGE 7)	AND	ACT/015/025
EAST, AND THE BEAR CREEK CANYON)		
PORTAL, SECTION 25, TOWNSHIP 16)		
SOUTH, RANGE 7 EAST, EMERY COUNTY)		
UTAH.		

#6

This cause came on for hearing before the Board on December 19, 1979, in the executive Room of the Holiday Inn, 1659 West North Temple, Salt Lake City, Utah. The following Board members were present:

- Charles Henderson, Chairman
- Ray Juvelin, Member
- Thadix Box, Member
- Edward Beck, Member
- E. Steele McIntyre, Member

Also present and representing the Division were:

- Cleon B. Feight, Director
- Ron Daniels, Coordinator of Mined Land Development
- Joe Helfrich, Reclamation Officer
- Denise A. Dragoo, Special Assistant Attorney General

Representing Co-op Mining Company:

- Eldon Kingston
- Wendell Owen

NOW THEREFORE, the Board having heard the testimony in this matter and having considered the evidence and being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT

1. Proper procedures for notice, service, and publication of this matter were followed pursuant to the Utah Coal Mining and Reclamation Act (Chapter 10, Title 40, Utah Code Annotated).
2. The Board has jurisdiction over this matter under the Utah Coal Mining and Reclamation Act, Chapter 10, Title 40, Utah Code Annotated.
3. On the 27th day of November, 1979, the Division issued an immediate cessation order at Co-op Mining Company's Bear Creek Canyon Portal to halt mining activities which were being conducted without an approved notice of intent to mine.

ORDER
ACT/015/021 &
ACT/015/025

2. Testimony of the Division of Oil, Gas and Mining indicates that the Division's cessation order issued on November 27, 1979 at the Co-op Trail Canyon Mine was lifted on December 3, 1979 after Co-op Mining Company demonstrated good-faith efforts towards complying with abatement procedures required by the Division. Further testimony shows that the Division and the operator met prior to this hearing and reduced the number of items needing correction at the Trail Canyon Mine to 13 points and after discussing each of these items, testimony demonstrated operator compliance with each to the satisfaction of the Division. Therefore, the Board has determined that while the cessation order was properly imposed upon the operator, that Co-op Mining has abated the violations to the satisfaction of the Board and the Division and that the cessation order will not be reimposed by the Board.

3. Section 40-10-20 of the Utah Coal Mining and Reclamation Act requires the Board to assess a mandatory civil penalty of not less than \$750.00 and not greater than \$5,000.00 for each violation which leads to the issuance of a cessation order by the Division. In assessing such fine, the Board has considered the operator's history of violations, the seriousness of such violation, negligence of the operator and demonstrated good-faith compliance. Taking these factors into consideration, the Board assesses a fine of \$7,500.00. However, \$5,000.00 of said fine will be suspended upon the following conditions:

(1) The \$2,500.00 fine is paid within 30 days of the operator's receipt of this order to the Division of Oil, Gas and Mining.

(2) The operator will remain in a probationary status for one year, from the date of the cessation order, during which time the operator must comply with the thirteen abatement measures required by the Division on December 10, 1979, or pay the entire \$7,500.00 fine. However, if either condition is not met by Co-op Mining Company, the full amount of the fine will be reinstated by the Board.

4. On the 27th day of November, 1979, the Division issued an immediate cessation order at the Co-op Trail Canyon Mine upon finding that said operation was in violation of the Board Orders of November 29, 1978 and February 28, 1979, and upon determining that said operation had failed to correct notices of violation issued by the Division on July 23, 1979 and September 25, 1979.

5. Said cessation orders were accompanied by orders to show cause, requesting the Co-op Mining Company to appear at hearing to show cause why the Board and Division should not permanently enjoin said operations and/or fine Co-op Mining Company for failure to comply with the Utah Coal Mining and Reclamation Act.

6. The issues before the Board are as follows:

(a) Was Co-op Mining Company conducting operations at the Bear Creek Canyon Portal without an approved notice of intent to mine?

(b) Did Co-op Mining Company fail to abate the Division's notices of violation at the Co-op Trail Canyon Mine?

(c) If the above violations were incurred, what sanctions will be imposed by the Board?

CONCLUSIONS OF LAW

1. Testimony presented by the Division demonstrates that activities at the Bear Creek Canyon Portal including earth moving, clearance of a pad site and pouring of footers are those type of activities within the definition of "surface mining operations" at Section 40-10-3(18) Utah Code Annotated. As such, these activities are in violation of the requirements of Section 40-10-9 of the Act which prohibits such operations where an approved permit to conduct mining has not been obtained from the Division. Therefore, the Board finds that such activities were properly enjoined by the Division's cessation order and that activities shall be permanently enjoined at the Bear Creek Canyon Portal until such time as Co-op Mining Company obtains an approved permit to mine at such site.

ORDER
ACT/015/021 &
ACT/015/025

ORDER

NOW THEREFORE, the Board orders as follows:

1. Co-op Mining Company's mining activities at the Bear Creek Canyon Portal are permanently enjoined until such time as the company obtains an approved notice of intent to mine such site from the Division of Oil, Gas and Mining.

2. Co-op Mining Company is hereby assessed a fine of \$7,500.00 which is reduced to \$2,500.00 upon the conditions set forth above. Such fine is payable to the Division within 30 days of Co-op Mining Company's receipt of this Order.

SO ORDERED this 23rd day of January, 1980.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

for Sandy Perez
THALIA R. BUSBY
Secretary to the Board