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

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IN THE MATTER OF THE APPEAL OF FACT OF VIOLATION C95-26-1-1, CO-OP MINING COMPANY, BEAR CANYON MINE, EMERY COUNTY, UTAH	:	FINDINGS, CONCLUSIONS AND ORDER
	:	CAUSE NO. ACT/015/025

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On August 2, 1995, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the fact of violation issued to Co-Op Mining Company for the above-referenced Cessation Order ("CO"). The following individuals attended:

Presiding: James W. Carter
Director

Petitioner: Eldon Kingston
Charles Reynolds
Wendell Owen
Kimly Mangum

Division: Joe Helfrich
William Malencik

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner in connection with this informal hearing, and on information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.

2. The Assessment Conference, to review the proposed penalties for CO C95-26-1-1, was held immediately following this informal hearing regarding fact of violation.

The requirement to pay the assessed penalty is stayed pending this decision upon the informal review of fact of violation.

3. Violation C95-26-1-1 was written for: "Failure to comply with the approved permit on the matter of the disposal of the Bear Canyon coal mine waste; Failure to conduct coal mine operations in compliance with the terms and conditions of the permit and requirements of the State of Utah coal mine program; and Failure to place coal mine waste within a permit area as approved by the Division."

4. Coal and non-coal materials were removed from the designated coal waste storage area at the Bear Canyon mine and transported by CTC trucks to the private road leading to the Railco train loadout. The coal waste materials were unloaded and spread out and used to widen the Railco road.

5. Co-Op asserts that the materials were saleable and therefore not "coal mine waste," and that the emplacement of the materials as road-base was performed by others not in the control of Co-Op.

6. Abatement of the violation, which required removal of the materials from the roadway and emplacement in an approved coal-waste disposal, was accomplished within the time set for abatement, as properly modified.

CONCLUSIONS OF LAW

1. Based upon the fact that Co-Op Mining Company placed the materials in question in its approved coal waste storage area, coupled with the fact that the materials were not used for fuel purposes, the Division concludes that Co-Op allowed coal waste materials to

be removed from its permit area in violation of the regulatory requirement that coal mining wastes be disposed of only in a permitted facility.

ORDER

NOW THEREFORE, it is ordered that:

1. Violation C95-26-1-1 be upheld.

2. Because there exists no evidence of actual environmental damage, the damage points are reduced to 10 to reflect a moderate likelihood of actual environmental damage. Because the permittee lacked direct control over the persons responsible for placing the coal wastes outside a permitted facility, the negligence points are reduced to 15.

3. Abatement constituted normal compliance, and 5 good faith points are awarded.

4. The finalized assessment of $600.00, resulting from the Assessment Conference of August 2, 1995, is due and payable to the Division 30 days from the date of this Order.

5. The Petitioner may appeal the determinations of fact of violation and/or the finalized assessments to the Board of Oil, Gas and Mining by filing said appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements, including placing the assessed civil penalty in escrow.

SO DETERMINED AND ORDERED this 31st day of August, 1995.

James W. Carter, Director
Division of Oil, Gas and Mining
State of Utah

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS, CONCLUSIONS AND ORDER for Cause No. ACT/015/025 to be mailed by first-class mail, postage prepaid, on the 1st day of September, 1995, to the following:

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