



0006
STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

File

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

January 21, 1986

CERTIFIED RETURN RECEIPT REQUESTED
P 592 431 917

Mr. Jack Higgins, President
Summit Minerals, Inc.
2783 Holiday Ranch Loop Road
Park City, Utah 84060

Dear Mr. Higgins:

RE: Finalized Assessment for State Violation No.'s C85-1-1-1,
C85-1-2-1, INA/043/001 Folder #8, Summit County, Utah

The civil penalties for the above referenced violations have been finalized. These assessments have been finalized as a result of a review of all pertinent data and facts which were not available on the date of the proposed assessments, due to the length of the abatement period.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must have escrowed the assessed civil penalties with the Division within a maximum of 30 days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further administrative recourse.

If no timely appeal is made, these assessed civil penalties must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division and mail % Jan Brown at the address listed above.

Thank you for your cooperation.

Sincerely,

David S. Christensen
David S. Christensen
Acting Assessment
Conference Officer

re
cc: Donna Griffin
9099Q

WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING

COMPANY/MINE Blackhawk/Summit Minerals Inc. CO # 85-1-1-1

PERMIT # INA/043/001 VIOLATION 1 OF 1

Nature of violation: Order to cease operations and to conform with the procedural requiremens (bond, map, plan).

Date of termination: _____

	<u>Proposed Assessment</u>	<u>Final Assessment</u>
(1) History/Prev. Vio.	<u>0</u>	<u>0</u>
(2) Seriousness		
(a) Probability of Occurrence	<u>20</u>	<u>20</u>
Extent of Damage	<u>22</u>	<u>22</u>
(b) Hindrance to Enforcement	<u> </u>	<u> </u>
(3) Negligence	<u>30</u>	<u>30</u>
(4) Good Faith	<u>0</u>	<u>0</u>
 TOTAL	 <u>72</u>	 <u>72</u>
	TOTAL ASSESSED FINE	<u>\$ 3,240</u>

3. Narrative:

Mr. Jack Higgins, President and major stockholder of Summit Minerals Inc., (the owner and operator of the mine) was present at the conference and was represented by counsel. Mr. Higgins explained that the general company plan for the Blackhawk Mine called for both coal, and sand and gravel operations, as well as some salvage of equipment and other items. Higgins said that the sand and gravel and salvaging was to provide funds for the mining, which hopefully could be done simultaneously with the other activities, and was done in such a way as to promote coal mining. He stated that the work on the portals and road was done for safety reasons and acknowledged that there had been a long history of violations and dealings with state and federal regulatory agencies.

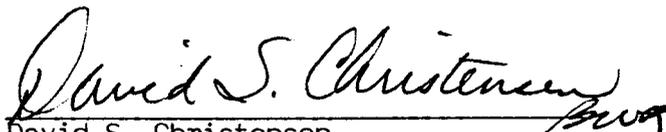
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Assessment of Penalties
Blackhawk Coal Mine
INA/043/001
January 21, 1986

The threshold issue presented by the assessment of this Cessation Order is whether the operator's activities amount to "surface coal mining operations" as defined by the statute and regulations. See, Utah Code Annotated section 40-10-3(18)(a) and (b) (1983). UMC 700.5 at p. 15 and 16. The Jurisdiction over the "activities" listed in U.C.A. 40-10-3 (18)(a) and the "areas" defined in U.C.A. 40-10-3(18)(b) must be construed broadly to fulfill the statute's broad remedial design. Therefore, I conclude that the activities described by both the operator and the Division at the Blackhawk Mine amount to "surface coal mining activities" and thus require the operator, Summit Minerals, Inc., to submit a plan of operations, post a bond, and comply with other procedural requirements, prior to commencing coal mining activities. The fact that the operator also performed sand and gravel operations, does not remove the operation from the requirements of the statute and regulations.

I therefore, find that the Cessation Order was well founded and since there appears to be no mitigating factors, assess the penalty without modification.

Assessment Date 1-21-86

0109Q


David S. Christensen
Acting Assessment Conference Officer

WORKSHEET FOR ASSESSMENT OF CESSATION ORDERS
UTAH DIVISION OF OIL, GAS AND MINING

COMPANY/MINE Blackhawk/ Summit Minerals CO # 85-1-2-1
 PERMIT # INA/043/001 VIOLATION 1 OF 1
 INSPECTOR Joseph C. Helfrich DATE ISSUED March 1, 1985

NATURE OF THE CESSATION ORDER: Failure to abate CO #85-1-1-1

DATE OF ABATEMENT OF CESSATION ORDER: Cease immediately

DATE OF RECEIPT OF CESSATION ORDER: August 16, 1985

TOTAL NUMBER OF DAYS OF FAILURE TO ABATE: 23 days

NUMBER OF DAYS X \$750/DAY = TOTAL ASSESSED FINE: \$17,250.00

NARRATIVE:

An assessment conference was held for CO#85-1-2-1 and the underlying Cessation Order, CO #85-1-1-1, at the same time. When temporary relief was granted, the operator had yet to post a bond, submit a mining and reclamation plan, or comply with the other procedural requirements provided for by the statute and rules. At the time of temporary relief, the operator had ceased all operations, and represented that it was preparing a mining and reclamation plan and would soon post a bond. Temporary relief was therefore granted from September 9, 1985 up to and including September 30, 1985.

CO# 85-1-2-1 was served pursuant to UMC 843.14(2) upon Jack Higgins, President and Chief Executive Office of Summit Energy, Inc. Mr. Higgins commented at length at the conference concerning his contacts with the Division, the development plans of Summit Energy and the history of the mine. It is clear from the comments of Mr. Higgins, as well as those of the Division, that Mr. Higgins was acting on behalf of Summit Minerals in the capacity of its chief corporate officer and the Division relied upon his apparent authority as President of the corporation. Mr. Higgins was thus a proper person for service of the two cessation orders, and as such the orders were operative as to the corporation and any liability for payment rests upon the corporation.

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Assessment of Cessation Order
Blackhawk Mine
January 21, 1986

Counsel for the operator requested at the conference that the Division examine its records to guarantee that there was no error in the number of days from the date that the CO was tendered to its termination. UMC 843.14(a)(2) essentially allows service by certified mail and is "complete upon tender of the notice or order of the mail and shall not be deemed incomplete because of refusal to accept." The Division issued and mailed by certified mail a copy of CO#85-1-2-1 to Jack Higgins on August 15, 1985, with a letter informing the operator of a \$750.00 penalty per day until termination. The postal return receipt shows that the CO was delivered on August 16, 1985, and that two notices were given by the post office. On August 31, 1985, the post office returned the CO notice as unclaimed. The CO was re-mailed on September 9, 1985 and was finally delivered and signed for on September 10, 1985. Therefore, the Division has complied with UMC 843.14(a)(2). The temporary relief in the order abated the penalty from September 9, 1985 up to and including September 30, 1985. During the period of abatement, plans were submitted by the operator, and since all coal mining activity had ceased, the Division terminated CO #85-1-2-1 on September 16, 1985. Although it has been contended by the owners of the surface estate that this termination was improper, it is within the purview of the Division to determine if the two requirements of the initial cessation order were satisfied. Since the Division has done so, it is not material to this determination of final assessment.

UMC 843.14(a)(2) does not require the Division to provide actual in hand delivery of the CO notice. Instead, the burden is placed upon the operator to have the designated service agent available for mail delivery, as a matter of good business practice. This is especially true when the operator has had actual notice of a first CO and has failed to meet its requirements for abatement within its time period. There is also an administrative necessity in the rule providing that an order is effective when delivered. Since cessation orders require immediate action and any penalty for failure to abate accrues from day to day, there must be some constant time of service. Although service by mail is appropriate for inactive mines, requiring actual delivery could cause great uncertainty about the time of actual delivery and could reward an operator's imprudent business practice or even the avoidance of delivery by failing to pick up the mail when notified by the post office.

Therefore, service was complete under the rule when the CO notice was delivered and a notice was left requesting that the mail be claimed. Since this service was on August 16, 1985 and the penalty ran from that date to the day of its abatement on September 9, 1985 (by a temporary relief order by the Board having retroactive effect) the penalty ran for 23 days.

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Assessment of Cessation Order
Blackhawk Mine
January 21, 1986

The proposed assessment called for the \$750.00 per day minimum penalty provided for by statute. There were no specific facts presented at the conference which would demand an increased penalty. Moreover, operations had ceased and temporary relief was granted and the CO was terminated during the time of temporary relief.

The assessment is thus modified only as to the number of days for which the penalty is due, but not as to the amount of penalty per day. The penalty is therefore \$750.00 per day for 23 days, or \$17,250.00.

DATE 1-21-86


David S. Christensen
ACTING ASSESSMENT CONFERENCE OFFICER

 PROPOSED ASSESSMENT X FINAL ASSESSMENT

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