



United States Department of the Interior
 OFFICE OF SURFACE MINING
 RECLAMATION AND ENFORCEMENT
 219 CENTRAL AVENUE, NW
 ALBUQUERQUE, NEW MEXICO 87102

MEMORANDUM

TO: Sam Bae

FROM: Wayne D. Oliver, Supervisory
 Program Specialist

SUBJECT: NOV - 84-2-311(1) - Results of Assessment
 Conference held December 18, 1984

On November 24, 1983, the Office of Surface Mining (Albuquerque Field Office) issued a ten day notice to DOGM (State of Utah) for a violation at the so called "Black Hawk Mine" operated and owned by Utah Coal and Energy (UCE). The principle owner and actual operator was one - Clem Cafarelli. The courtesy copy of the ten day notice was sent to Mr. Cafarelli. OSM and the State made a follow up inspection on June 11, 1984 (impossibile to do so at an earlier date because of deep snow and severe climatic conditions). As a result of this inspection, OSM issued an NOV. on June 12, 1984 to Bennett Leasing Company (see below).

Between November 24, 1983 and June 11, 1984 two significant events occurred. (1) Several years earlier Mr. Cafarelli who owned 55% of the stock in Utah Coal and Energy leased several hundred thousand dollars of equipment from an equipment leasing Company. As collateral, Mr. Cafarelli gave the leasing Company, "Bennett Leasing Company", a stock pledge agreement. In the spring of 1984 Bennett Leasing went to court and got a foreclosure. At this time Bennett Leasing received the 55% of stock owned by Mr. Cafarelli. Later this same spring, Mr. Cafarelli, to whom the Ten Day Notice had been sent, died. When OSM's inspector inspected the site on June 11, 1984 there was a local person on the site who out of personal interest accompanied the State and Federal inspectors on their inspection. From statements made by this ~~this~~ person, a Mr. Higgins, the inspectors inferred that he represented the interests of Bennett Leasing (this later turned out be be untrue).

In conversation with Mr. Higgins the OSM inspector, inquired of Mr. Higgins who was the operator (the mine was closed) now that Mr. Cafarelli was dead, Mr. Higgins told them that Bennett Leasing was now the major stockholder. Consequently, OSM's inspector issued NOV 84-2-31-1(1) to *Utah Coal & Energy* Bennett Leasing Company on June 12, 1984. *(Bennett Leasing appeared as addressee on new mine entrance sign.) FA*

When Bennett Leasing Company received this notice it was the first knowledge they had of the problem. They immediately contacted the State and OSM to inquire what this meant.

OSM's Solicitor, Jerry Thornton wrote to Bob Hagen on September 26, 1984 and made the following statement, "At this point, I see no basis for holding Bennett directly responsible for UCE's obligations..."

Attached you will find copies of:

- (1) Letter from Thornton to Hagen - 9-26-84
- (2) Conclusion of Conference Report
- (3) Assessment Conference Report

Please note:

- (a) As Bennett Leasing Co. was not responsible for Utah Coal & Energy's actions, they should not be penalized. The inspector could vacate the violation, but I have not asked him about this as a violation did occur. OSM has continual difficulties with the State in vacating violations, therefore if OSM did it now for any other reason than the violation did not occur we would only be giving the State stimulation to increase such activities.
- (b) The probability of the event occurring is reasonable so I am recommending leaving these points at 14.
- (c) Damage will extend beyond mine site (no permit was ever issued) so I am leaving the points at 8.

(d) Negligence: As our Solicitor has stated that Bennett can not be held responsible for UCE's obligations and considering that the ten day notice was issued to the State concerning Mr. Cafarelli's (and UCE) operations, Bennett Leasing could not have been negligent, therefore I am reducing the negligence points to "0" as this is in compliance with penalty Assessment Manual (March-84) page 27 (3) (a).

(e) Bennett Leasing hired a person to correct the problem cited in the NOV. This has to be construed as good faith when they were not responsible yet as shareholders (one of many), they acted as "good citizens". Because of this good faith action, I am recommending that Bennett Leasing be awarded-10 points.

I would appreciate your reviewing these facts and my recommendations and get in touch with me no later than January 15, 1985. If I have not heard from you by this date I will contact you but will assume that you concur and will notify Bennett Leasing.

As Bennett Leasing Co. is not responsible for Utah Coal & Energy's actions, they should not be penalized. The inspector could vacate the violation. Mr. Y have not cited him about this as a violation. Mr. Y have not cited him about this as a violation. Mr. Y have not cited him about this as a violation.