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SECRETARY, BOARD OF OIL, GAS & MINING

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

IN THE MATTER OF THE PETITION BY THE DIVISION OF OIL, GAS AND MINING FOR AN ORDER REQUESTING THE ATTORNEY GENERAL TO RECOVER, IN DISTRICT COURT, CIVIL PENALTIES OWED BY ROCK-IT STONE WORKS; STRAWBERRY RIVER QUARRY, DUCHESNE COUNTY, UTAH.	:	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** DOCKET NO. 2005-012 CAUSE NO. S/013/008

This cause came on for hearing before the Utah Board of Oil, Gas and Mining ("Board") on Wednesday, July 27, 2005, at 10:00 a.m., in Salt Lake City, Utah. The following Board members were present and participated at the hearing: Chairman J. James Peacock, Robert J. Bayer, Douglas E. Johnson, Kent R. Petersen, Samuel C. Quigley and Jean Semborski. Board member Jake Y. Harouny was unable to attend. The Board was represented by Stephen G. Schwendiman, Assistant Attorney General.

Testifying on behalf of Petitioner, the Utah Division of Oil, Gas and Mining ("Division"), was Paul Baker, Reclamation Specialist. Alison D. Garner, Assistant Attorney General, appeared as attorney for the Division.

No representative appeared for or in behalf of Defendant, Rock-It Stone Works, L.L.C. ("Operator").

Assad Raffoul, Petroleum Engineer, Utah State Office of the Bureau of Land Management was present but did not make a formal appearance or participate in the hearing.

No other party filed a response to the Division's Notice of Agency Action and no other party appeared or participated at the hearing.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised, and for good cause shown, hereby makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Rock-It Stone Works, L.L.C. is the operator of the Strawberry River Quarry, located in portions of the SW¼NE¼ and the NW¼ SE¼ of Section 16, Township 4 South, Range 7 West, SLM, Duchesne County, Utah.
2. On September 10, 2004, the Division issued, via certified return receipt mail, to Rock-It Stone Works Cessation Order MC-2004-03-01-02, for: a) failing to pay permit fees and operating on a suspended notice; and b) failing to furnish an amendment with right of entry information and a map showing the location of operations, which had exceeded the area outlined in the Notice of Intention on file with the Division.
3. The Operator received the cessation Order on September 14, 2004, according to the certified return receipt. Both parts of this cessation order were later abated and terminated.
4. Penalty assessments associated with this cessation order, totaling $3960.00, were mailed to Mr. Shannon Peatross, Rock-It Stone Works, by certified mail on October 8, 2004. This letter was returned by the Postal Service as unclaimed after its last delivery attempt on October 24, 2004.
5. On November 16, 2004, the Division faxed the penalty assessments to Mr. Peatross and re-sent them via first class mail. The Division staff also telephoned and informed

Mr. Peatross that payment of the assessments was due by November 23, 2004, thirty days from the last delivery attempt by the Postal Service. Division staff notified Mr. Peatross that, in the alternative, he could appeal the penalty assessments by the same date, November 23, 2004, in accordance with Utah Administrative Code R647-7-105 and R647-7-106.

6. Mr. Peatross and Rock-It Stone Works did not make payment of the assessments nor appeal the fact of the cessation order. The deadline for appealing either the fact of the cessation order or the assessments has long since expired.
7. As of the date and time of the hearing, July 27, 2005, at 10:00 a.m., the Division had not received payment from Rock-It Stone Works.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place and purpose of the hearing was properly given to all parties whose legally protected interests are affected by the Notice of Agency Action in the form and manner as required by law and the rules and regulations of the Board and Division.
2. The Board has jurisdiction over all matters covered by the Notice of Agency Action and all interested parties therein, and has power and authority to render the order herein set forth pursuant to §§ 40-8-6, 40-8-8, and 40-8-9.1 (2005).
3. The Operator has failed to make timely and proper payment of penalties and assessments owed under R647-7, *et seq*.
4. To recover civil penalties in district court, the Division must receive an order from the Board, according to Utah Code Ann. § 40-8-9.1(4) (2005).

5. The Division has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of its Notice of Agency Action.

ORDER

Based upon the Notice of Agency Action, testimony and evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

1. The Notice of Agency Action in this cause is granted.
2. The Division may request the Attorney General to recover, in district court, civil penalties owed by the Operator, along with attorney fees, costs and interest on the civil penalties owed.
3. Pursuant to Utah Admin. Code R641 and Utah Code Ann. § 63-46b-6 through - 10, the Board has considered and decided this matter as a formal adjudication.
4. This Order is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decisions and the reasons for the decision, all as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-10(e) - 10(g) and Utah Admin. Code R641-109.
5. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63-46b-10, the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within thirty (30) days after the date this Order issued. Utah Code Ann. § 63-46b-14 and –16. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the

Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. § 63-46b-13, entitled, "Agency Review – Reconsideration," states:

> (1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.
> (b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.
> (2) The request for reconsideration shall be filed with the agency and one copy shall be mailed to each party by the person making the request.
> (3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.
> (b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Admin. Code R641-110-100, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

> Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of the month.

Id. See Utah Admin. Code R641-110-200 for the required contents of a petition for rehearing. FI there is any conflict between the deadline in Utah Code Ann. § 63-46b-13 and the deadline in Utah Admin. Code R641-110-100 for moving to re-hear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to re-hear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order

by perfecting a timely appeal with the Utah Supreme Court within thirty (30) days thereafter.

6. The Board retains continuing jurisdiction over all the parties and over the subject matter of this cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this Order by the Utah Supreme Court.

7. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

DATED this 8th day of August, 2005.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

J. James Peacock, Chairman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing "Findings of Fact, Conclusions of Law and Order" for Docket No. 2005-012, Cause No. S/013/008, to be mailed, postage prepaid, on this 10th day of August, 2005, to the following:

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