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SECRETARY, BOARD OF
OIL, GAS & MINING

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

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IN THE MATTER OF THE PETITION BY THE DIVISION OF OIL, GAS & MINING FOR AN ORDER AGAINST UNITED STONE & DESIGN, INC.: (1) WITHDRAWING OF THE UNITED STONE MINE'S, S/047/0079, NOTICE OF INTENTION TO COMMENCE SMALL MINING OPERATIONS; (2) FORFEITING THE SURETY; (3) DIRECTING THE DIVISION TO COMPLETE RECLAMATION, AND AUTHORIZING A CIVIL SUIT TO RECOVER COSTS AND PENALITIES FROM UNITED STONE & DESIGN, INC. AND THE UNITED STONE MINE, S/047/0079; AND (4) TAKING ALL OTHER ACTIONS NECESSARY TO RECLAIM THE LANDS LOCATED AT S27, T12S, R20E; S29, T12S, R20E; AND S06, T13S, R20E, USBM, UINTAH COUNTY, UTAH.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** DOCKET NO.: 2013-008 CAUSE NO.: S/047/0079

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This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the

"Board") on Wednesday, April 24, 2013 at approximately 2:00 p.m., in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City, Utah. The following Board members were present and participated at the hearing: Chairman James T. Jensen, Vice-Chairman Ruland J. Gill, Jr., Kelly L. Payne, Chris D. Hansen, Carl F. Kendell and Susan S. Davis. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

At the hearing, Cameron Johnson, Esq., attorney for the Division, summarized the facts for the Board. Paul Baker, the Division's lead Reclamation Specialist, affirmed the facts of the matter as outlined by Mr. Johnson.

United Stone & Design did not respond to the Notice of Agency Action and was not represented at the hearing by counsel.

The Board, having considered the summary of facts and testimony presented and the exhibits received into evidence before the hearing, being fully advised, and for good cause, hereby makes the following findings of fact, conclusions of law and order in this Cause.

FINDINGS OF FACT

1. United Stone and Design, Inc. ("United Stone" or "operator") is a defunct Utah corporation that is no longer in good standing, with its principal place of business in Duchesne, Utah.

2. United Stone began commercial mining activity at the United Mine sometime in 2004 without filing a Notice of Intention ("NOI") with the Division.

3. The United Mine is located in Section 27, T12S, R20E; Section 29, T12S, R20E; and Section 06, T13S, R20E, USBM, Uintah County, Utah.

4. In 2006 the Utah Administrative Code R647-3 was amended to require small mine operators to submit an adequate surety along with a Notice of Intention for all mines smaller than five acres.

5. The Division issued a Cessation Order, MC2006-03-07-01 ("CO 1"), to United Stone for failing to have a NOI for the United Mine. CO 1 ordered United Stone to submit a NOI to the Division by July 31, 2006 and a surety after the NOI was determined to be complete, but no later than August 7, 2006. Per the terms of CO 1, the timely filing of the NOI and surety would offset the penalty associated with the cessation order.

6. The operator submitted the NOI on August 2, 2006.

7. On August 15, 2006 the Division informed United Stone that the NOI as submitted for the United Mine was deficient for a variety of reasons. The operator failed to provide adequate information identifying the operator, a location map, operations, and area of disturbance among other things. The Division extended the deadline until September 15, 2006 to allow the operator to gather the required information.

8. On October 6, 2006 the Division informed United Stone that the amount of surety for the United Mine was $12,000 and extended the abatement deadline for CO 1 to October 16, 2006.

9. On December 21, 2006 the abatement deadline for CO 1was extended to January 16, 2007.

10. On February 20, 2007, the abatement deadline for CO 1 was extended again until March 16, 2007.

11. On March 7, 2007 the Division informed United Stone that it received a copy of a certificate of liability insurance issues by Service Insurance Agency. The certificate identified a

reclamation bond for the United Mine. However, the Division required the original executed surety reclamation bond. The Division also attached a standard reclamation contract for United Stone's principal, Mr. Justin Farley, to sign and return.

12. On March 16, 2007 Mr. Farley signed and returned the reclamation contract on behalf of United Stone to the Division, but did not provide the original reclamation bond document.

13. On March 19, 2007 the Division extended the abatement deadline for CO 1 to April 2, 2007 because it was still waiting to receive the original reclamation bond document.

14. On April 6, 2007 the Division issued Cessation Order MC2007-03-01-01 ("CO 2") to United Stone because United Stone failed to provide the original documentation that the Division was seeking under CO 1.

15. Throughout April, 2007 the Division and the operator engaged in discussion aimed at establishing a payment schedule that would allow the operator pay the $12,000 surety through incremental payments because the Division rejected the certificate of liability insurance that the operator originally offered as a surety. The terms of the payment schedule required a $1,200 down payment and twelve monthly payments of $900, which were due on the last day of each month beginning on May 31, 2007. The funds were to be held by Zions Bank in account no.: 811985. On May 2, 2007 the Division received a signed copy of the payment schedule from United Stone and the first payment of $1,200.

16. On May 21, 2007 the Division formally approved the United Mine's NOI and reclamation surety and permitted United Stone to conduct mining operations at the mine.

17. On June 11, 2007 the Division informed United Stone that it was still awaiting the $900 due on May 31st per the terms of the payment schedule. United Stone was given until June 18, 2007 to submit the $900.

18. On September 26, 2007 the Division informed United Stone that it had failed to make the August payment of $900.

19. The operator failed to make the required September and October payments of $900 each.

20. On November 20, 2007 the Division demanded that the outstanding balance of $7,200 be paid in full immediately.

21. On December 28, 2007 the Division responded by letter to a series of emails from Mr. Farley of United Stone, who claimed that each of the missing payments had been made, but were purportedly returned with letters informing him that there was no longer any place to apply the payments.

22. On January 8, 2008 the Division formally prohibited any mining activity at the United Mine because the operator failed to submit the full surety balance. It also demanded that United Stone complete reclamation by June 1, 2008. The Division promised to waive the reclamation requirement if the outstanding $7,200 was paid in full before the June 1st deadline.

23. On June 16, 2008 the Division issued Cessation Order MC2008-59-01("CO 3") to United Stone for failing to furnish and maintain a reclamation surety. CO 3 required the operator to make the full payment within two weeks, which United Stone failed to do.

24. On July 22, 2008 a Division Assessment Officer determined the proposed penalty associated with CO 3 to be $2,200. A copy of this determination was mailed to United Stone.

25. On November 13, 2008 the Division issued Cessation Order MC2008-59-02 ("CO 4") to USD for its failure to abate CO 3. CO 4 required the immediate cessation of all mining related activity at the United Mine. The Division also withdrew the operator's NOI and required reclamation work to be completed within ninety days.

26. On May 20, 2009 the Division's Assessment Officer totaled a proposed assessment penalty of $6,000 against United Stone for failing to abate CO 4.

27. On October 20, 2009 the Division released its final assessment for penalties associated with violating CO 4. The Division reduced the penalty total from $6,000 to $1,500 because the operator undertook some reclamation work during June, 2009. On April 14, 2010 the Division informed United Stone about its intention to seek a forfeiture order from the Board in the amount of $3,900 paid to and held by the Division under the payment agreement. It also informed United Stone about its intention to seek permission from the Board to pursue civil penalties in a civil court associated with CO's 2 ($1320), 3 ($2200), and 4 ($1500), which total $5,020.

28. On April 15, 2013 the Division filed exhibits supporting these facts.

29. At the April 24, 2013 Board hearing United Stone & Design was absent and not represented by counsel.

30. Mr. Johnson, attorney for the Division, moved to provide a summary of the facts. This motion was granted and after his recitation, Mr. Baker affirmed those facts as true to the best of his knowledge.

31. The Board unanimously voted to grant the relief the Division was seeking.

CONCLUSIONS OF LAW

1. Under Utah Code Ann. § 40-8-13, an operator is required to have a NOI before it can begin any mining operations at a site.

2. An operator's NOI may be withdrawn if the operator "substantially fails to perform reclamation" or "fails to provide and maintain surety as required" in accordance with Utah Code Ann. § 40-8-16(2)(a) and(b).

3. An operator is required to reclaim a mine site in accordance with the Divisions' requirements and the requirements of Utah Admin. Code R647-4-111.

4. If an operator fails to conduct reclamation, the Board may, after notice and hearing, order that the "the costs and expenses of reclamation, together with costs of recollection including attorney's fees be recovered in a civil action brought by the attorney general against the operator in any appropriate court" under Utah Admin. Rule R647-3-112(2).

5. Under Utah Code Ann. § 40-8-9.1(3)(a) "a civil penalty assessed by the division shall be final only after the person charged with a violation described under Subsection (1) has been given an opportunity for public hearing."

6. Under Utah Code Ann. § 40-8-9.1(3)(b) "if a public hearing is held, the board shall make findings of facts and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring the order to be paid."

7. Under Utah Code Ann. § 40-8-9.1(4) "[c]ivil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state."

ORDER

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

1. The Request in this cause is granted.

2. NOI S/047/0079 for the United Mine site as described in Paragraph 3 of the Findings of Fact in this order is formally withdrawn.

3. The funds held by Zions Bank in account no.: 811985 associated with the site are forfeited and the Division is directed to complete the necessary reclamation work at the United Mine site using the forfeited funds for that purpose.

4. The Division is authorized to begin reclamation work at the United Mine site described in Paragraph 3 of the Findings of Fact section in this order.

5. The Division is authorized to seek the repayment of all reclamation costs from United Stone & Design as well as any other additional costs and attorney's fees associated with this matter.

6. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63G-4-208(e) - (g), 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 30 days after the date that this Order is issued. Utah Code Ann. §§ 63G-4-401(3)(a) and 403. 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. § 63G-4-302, 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 63G-4-301 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 Rule 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 that month.

Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63G-4-302 and the deadline in Utah Admin. Code R641-110-100 for moving to rehear this matter, the Board hereby

rules that the later of the two deadlines shall be available to any party moving to rehear 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 30 days thereafter.

7. 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.

8. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

DATED this 9th day of May, 2013

UTAH BOARD OF OIL, GAS & MINING

James T. Jensen, Chairman

CERTIFICATE OF SERVICE

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. 2013-008, Cause No. S/047/0079 to be mailed by Email or via First Class Mail with postage prepaid, this 9th day of May, 2013, to the following:

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