

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. BFA-24529-043
PERMIT NO. 889-0061
NONCOMPLIANCE NO. 110405
CESSATION ORDER NO. 010785**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

VS.

FINAL ORDER

CANYON COALS, INC.,

DEFENDANT.

* * * * *

THIS MATTER is before the Secretary on the Report and Recommendation of the Hearing Officer. Having considered the Hearing Officer's Report and Recommendation and any exceptions and responses thereto, and being otherwise sufficiently advised, it is hereby ORDERED AND ADJUDGED as follows:

1. The Hearing Officer's Report and Recommendation filed on May 15, 2000, is hereby incorporated by reference as if fully stated herein. The recommended Findings of Facts and Conclusions of Law set out in the Hearing Officer's Report are ADOPTED by reference as the Findings of Fact and Conclusions of Law for this Final Order.

2. Defendant Canyon Coals, Inc. ("Canyon") has WAIVED its right to an administrative hearing concerning this matter.

3. As stated in the final order entered on July 26, 1999 in PAC-24529-I, Canyon violated Kentucky's surface mining laws as cited in Notice of Noncompliance 11-0405 and Cessation Order 01-0785 and has not abated those violations on Permit 889-0061.

4. Canyon is unable to continue to comply with the requirements of law and conditions of permit, and has abandoned its operations under the permit.

5. Permit 889-0061 is hereby REVOKED.

6. Canyon is INELIGIBLE to receive another coal mining permit or begin future mining operations in Kentucky until it has complied with the requirements of Kentucky's surface mining laws.

7. Canyon SHALL ABATE the violations cited in the Notice of Noncompliance and Cessation Order listed above, reclaim the permit to permanent program standards, and achieve the post mining land use as approved in the permit.

8. This is a FINAL and APPEALABLE Order.

APPEAL RIGHTS

In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a Petition for Review. Such petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet.

ENTERED this the _____ day of _____, 2000.

//S// 6/19/2000 _____
JAMES E. BICKFORD, SECRETARY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing FINAL ORDER was, on this ____ day of _____, 2000, mailed by first-class mail, postage prepaid to:

CANYON COALS INC
PO BOX 209
HARTFORD KY 42347

and hand-delivered to:

HON. S. BRADFORD SMOCK
Office of Legal Services
Natural Resources and Environmental
Protection Cabinet
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COORDINATOR

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NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

VS. **HEARING OFFICER'S REPORT AND RECOMMENDATION**

CANYON COALS, INC.,

DEFENDANT.

* * * * *

I. SUMMARY OF PROCEEDINGS

Nature of Case: Coal mining enforcement action.

Hearing Date: Submitted on Motion for Default April 24, 2000.

Appearances: Hon. Bradford Smock for Cabinet;
 Canyon Coals, Inc. ("Canyon") did not appear.

Submittal Date: April 24, 2000.

Hearing Officer: Vanessa Mullins.

Issues Summary: Whether Canyon should be held in default for failure to appear.

Recommendations: Canyon should be found in default and the Cabinet be granted the relief it requested. The Secretary should find Canyon failed to abate the previously affirmed violations, determine that Canyon is unable to continue to comply with the law and permit, determine that Canyon has abandoned operations under the permit, revoke the permit, determine Canyon ineligible to receive another permit or begin another operation until KRS 350.130 is met, and order Canyon to abate the violations and achieve the post mining land use.

* * * * *

II. FINDINGS OF FACT / PROCEDURAL HISTORY/ CONCLUSIONS OF LAW

Based upon the record of this matter, the Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law.

1. On February 2, 2000, the Natural Resources and Environmental Protection Cabinet filed an Administrative Complaint against Canyon concerning violations on Permit No. 889-0061. The Cabinet's Administrative Complaint alleged that the Secretary entered a Final Order on July 26, 1999 affirming the violations cited in Notice of Non-Compliance 11-0405 and Cessation Order 01-0785, in file number PAC-24529-I. The Administrative Complaint also alleged that the violations had not been abated. It also alleged that the Defendant is unable to prove its ability to continue to comply with the requirements of law and conditions of permit, and further that Defendant has abandoned its operations under the permit.

2. As evidenced by the return receipt card (green card) in the files maintained by the Office of Administrative Hearings, the Administrative Complaint, Summons and Order setting prehearing conference for March 21, 2000 were sent to Canyon by certified mail, postage prepaid and return receipt requested on February 9, 2000, to the permit address as identified in the Administrative Complaint. The U. S. Postal Service returned these documents to the Office of Administrative Hearings on February 14, 2000 stamped "Box closed, unable to forward."

3. Based on the foregoing, I conclude that the Administrative Complaint, Summons and Order were properly served on Defendant in accordance with 405 KAR 7:091, Section 5(1)(c).

4. The Defendant failed to file an Answer or responsive pleading as required by 405 KAR 7:092, Section 5(3)(b).

5. A Prehearing Conference was held March 21, 2000. The Cabinet was represented by the Hon. Bradford Smock. The Defendant failed to appear. Since the Defendant did not appear, the Cabinet requested that the Hearing Officer enter an Order for Defendant to appear and show cause as to why it should not be held in default.

6. On March 22, 2000, a Show Cause Order was entered and served ordering the Defendant to appear on April 24, 2000, and show cause why it should not be deemed to have waived its right to an administrative hearing. The Order Directing Defendant to Appear and Show Cause was properly served on the Defendant in conformity with the Cabinet's regulation governing service of documents or other pleadings. 400 KAR 1:030, Section 2.

7. On April 24, 2000, a Show Cause Hearing was held. The Cabinet was represented by the Hon. Bradford Smock. No appearance was made on behalf of the Defendant to show cause why the Defendant should not be deemed to have waived its right to a hearing under 405 KAR 7:092, Section 5(5).

8. Pursuant to 405 KAR 7:092, Section 5, if an order to show cause is not satisfied as required, the Hearing Officer shall recommend to the Secretary the entry of a final order in conformity with the relief requested by the Cabinet in its Administrative Complaint.

9. Under the provisions of 405 KAR 7:092, Section 5(5), the Defendant has admitted the allegations made by the Cabinet in its Administrative Complaint and failed to demonstrate why a Secretary's Order adverse to its interests should not be entered in accordance with the provisions of 405 KAR 7:092 granting the Cabinet the relief it requested in its Administrative Complaint.

III. RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearing Officer recommends that the Secretary enter the recommended Order, attached and incorporated herein, granting the Cabinet the relief requested in its Administrative Complaint. The Secretary should determine that the violations have not been abated, determine that Canyon is unable to continue to comply with the law and permit, determine that Canyon has abandoned operations under the permit, revoke the permit, determine Canyon ineligible to receive another permit or begin another operation until KRS 350.130 is met, and order Canyon to abate the violations and achieve the post mining land use.

IV. EXCEPTIONS AND RESPONSE RIGHTS

Pursuant to KRS 350.0301 any party may file exceptions to this Report and Recommendation within fourteen (14) days of service of this Report. A party may file a Response to any Exceptions within (21) days of service of this Report. The Secretary will consider this report, exceptions, response and recommended order and decide the case.

SO RECOMMENDED this _____ day of _____, 2000.

//S// 5/15/2000 _____
VANESSA MULLINS
ENVIRONMENTAL ADMIN. HEARING OFFICER
OFFICE OF ADMINISTRATIVE HEARINGS
35-36 FOUNTAIN PLACE
FRANKFORT, KENTUCKY 40601
(502) 564-7312

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing HEARING OFFICER'S REPORT AND RECOMMENDATION AND PROPOSED FINAL ORDER was, on this _____ day of _____, 2000, mailed by first-class mail, postage prepaid to:

CANYON COALS INC
PO BOX 209
HARTFORD KY 42347

and hand-delivered to:

HON. S. BRADFORD SMOCK
Office of Legal Services
Natural Resources and Environmental
Protection Cabinet
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

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