

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. BFA-24579-043
PERMIT NO. 867-5018
NONCOMPLIANCE NO. 511751
CESSATION ORDER NO. 051868

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

VS.

FINAL ORDER

BLACKWOOD FUEL CO, INC. and
VAN AMERICAN INSURANCE CO.,

DEFENDANTS.

* * * * *

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 ___[10/27/00]_____, 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. Defendants Blackwood Fuel Co. Inc., ("Blackwood") and Van American Insurance Co. ("Van American") have WAIVED their right to an administrative hearing concerning this matter.

3. As evidenced by the final order of the Secretary entered on September 10, 1999 in PAC-24579-V, Blackwood violated Kentucky's surface mining laws as cited in Notice of

Noncompliance 51-1751 and Cessation Order 05-1868 and has not abated those violations on Permit 867-5018.

4. Surety performance bond VKY-91-0108 having a remaining encumbered balance of \$1,649 is FORFEITED.

5. Blackwood 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 and KRS 350.130.

6. Blackwood 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.

7. 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 _____, 20____.

_____/S// 11/28/00_____
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 _____, 20 ____, mailed by first-class mail, postage prepaid to:

BLACKWOOD FUEL CO INC
PO BOX 880
NORTON VA 24273

BLACKWOOD FUEL CO INC
HC 87 BOX 2790
MAYKING KY 41837

VAN AMERICAN INSURANCE CO
333 WEST VINE STREET 12 FLOOR
LEXINGTON KY 40507

and hand-delivered to:

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

DOCKET COORDINATOR

Distribution:

DIVISION OF FIELD SERVICES/BFS
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NATURAL RESOURCES AND
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FILE NO. BFA-24579-043
PERMIT NO. 867-5018
NONCOMPLIANCE NO. 511751
CESSATION ORDER NO. 051868

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

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

BLACKWOOD FUEL CO, INC. and
VAN AMERICAN INSURANCE CO.,

DEFENDANTS.

* * * * *

I. SUMMARY OF PROCEEDINGS

Nature of Case: Coal mining enforcement action for bond forfeiture.

Hearing Date: Submitted on Motion for Default September 12, 2000.

Appearances: Hon. Laura Hunter for Cabinet;
Blackwood Fuel Co. Inc. ("Blackwood") did not appear;
Van American Insurance Co. ("Van American") did not appear.

Submittal Date: September 12, 2000.

Hearing Officer: Hon. Vanessa Mullins.

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

Recommendations: Defendants should be found in default and the Cabinet be granted the relief it requested. The Secretary should find Blackwood failed to abate the previously affirmed violations, determine Blackwood ineligible to receive another permit or begin another operation until the requirements of KRS 350.130 are met, forfeit the performance bond and order Blackwood 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 June 28, 2000, the Natural Resources and Environmental Protection Cabinet filed an Administrative Complaint against Blackwood and Van American concerning violations on Permit No. 867-5018. The Cabinet's Administrative Complaint concerned violations previously addressed in a Secretary's Final Order on September 10, 1999 which affirming the violations cited in Notice of Non-Compliance 51-1751 and Cessation Order 05-1868, in file number PAC-24579-V. The Administrative Complaint alleged that the violations had not been abated.

2. The Complaint also alleged that Blackwood as principal and Van American as surety posted performance bond number VKY-91-0108 guaranteeing performance on the permit and having a remaining encumbered balance of \$1,649.

3. As evidenced by the return receipt cards (green cards), the Administrative Complaint, Summons and Order setting prehearing conference for August 21, 2000 were sent to Blackwood by certified mail, postage prepaid and return receipt requested on June 30, 2000, to Blackwood's principal office address (P.O. Box 880, Norton, Virginia 24273) and its Registered Agent for service of process (Fred Webb, HC 87, Box 2790, Mayking, Kentucky 41837). The Cabinet obtained the addresses provided in its Administrative Complaint from the records of the Kentucky Secretary of State which are filed in the record at Docket Item 3. The U. S. Postal Service returned the document addressed to the corporation's principal office on July 5, 2000 stamped "Not deliverable as addressed, unable to forward." The return receipt card for the

documents addressed to the registered agent indicates that the documents were accepted at that address on July 3, 2000.

4. On June 30, 2000, the Administrative Complaint, Summons and Order setting prehearing conference for August 21, 2000 were also sent by certified mail, postage prepaid and return receipt requested to surety company Van American Insurance Co. at its registered agent's address (333 West Vine Street, 12th Floor, Lexington, Kentucky 40507) which is the address indicated in the Secretary of State's information filed in the record at Docket Item 5. The return receipt card for the documents addressed to Van American were accepted at that address on July 3, 2000.

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

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

7. A Prehearing Conference was held August 21, 2000. The Cabinet was represented by the Hon. Laura Hunter. The Defendants failed to appear. Since the Defendants did not appear, the Cabinet requested that the Hearing Officer enter an Order for Defendants to appear and show cause as to why they should not be held in default.

8. On August 23, 2000, a Show Cause Order was entered and served ordering the Defendants to appear on September 12, 2000, at 2:15 p.m. and show cause why they should not be deemed to have waived their rights to an administrative hearing. The Order Directing Defendants to Appear and Show Cause was properly served on the Defendants in conformity with the Cabinet's regulation governing service of documents or other pleadings. 400 KAR 1:030, Section 2.

9. On September 12, 2000, at 2:15 p.m. a Show Cause Hearing was held. The Cabinet was represented by the Hon. Laura Hunter. No appearance was made on behalf of the Defendants to show cause why they should not be deemed to have waived their right to a hearing under 405 KAR 7:092, Section 5(5). Later in the afternoon, the Hearing Officer received a phone call from Hon. Rick Thomas, counsel for Van American. Mr. Thomas was advised that the hearing had already concluded. Mr. Thomas stated that he was unsure of whether his client wished to contest this matter. He was advised that the Hearing Officer would provide him an opportunity to enter an appearance if he chose to do so. He agreed to contact the Hearing Officer by close of business on September 13, 2000 if he wished to enter an appearance and contest this matter. Mr. Thomas did not contact the hearing officer by that deadline.

10. 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.

11. 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 their 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, forfeit the bond, determine Blackwood ineligible to receive another permit or begin another operation until KRS 350.130 is met, and order Blackwood 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//10/27/00
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:

BLACKWOOD FUEL CO INC
PO BOX 880
NORTON VA 24273

BLACKWOOD FUEL CO INC
HC 87 BOX 2790
MAYKING KY 41837

VAN AMERICAN INSURANCE CO
333 WEST VINE STREET 12 FLOOR
LEXINGTON KY 40507

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HON. LAURA HUNTER
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Fifth Floor, Capital Plaza Tower
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