



IN THE MATTER OF:  
FRANK E. SIMS CONSTRUCTION  
COMPANY - A JOINT VENTURE  
PERMIT NO. 173A-2

LIS 84-073

ORDER OF SUSPENSION

This Order of Suspension is issued by the Commission on Pollution Control and Ecology (Commission) pursuant to the authority of the Open Cut Land Reclamation Act, Act 336 of 1977, as amended, codified at Ark. Stat. Ann. §§ 52-917 to 52-934 (Supp. 1983), the Arkansas Surface Coal Mining and Reclamation Act of 1979, Act 134 of 1979, as amended, codified at Ark. Stat. Ann. §§ 52-935 to 52-971 (Supp. 1983) and the Arkansas Surface Coal Mining and Reclamation Code (Code). A hearing was held at the Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas on March 29, 1985, at 10:00 a.m. Frank E. Sims Construction Company - A Joint Venture appeared and was represented by counsel. Based on the evidence produced at that hearing the Commission makes the following Findings of Fact:

1. All of the principals involved in Frank E. Sims Construction Company - A Joint Venture were properly served with an Order To Show Cause in December, 1984. The principals in the joint venture include the Frank E. Sims Construction Company, Mr. Sterlin Hurley, and six individual physicians practicing in the Ft. Smith, Arkansas area.

2. The Commission on Pollution Control and Ecology has jurisdiction over this subject matter and the permittee, Frank E. Sims Construction Company - A Joint Venture, pursuant to Section 9(e) of Act 336 of 1977, codified at Ark. Stat. Ann. § 52-925(e) (Supp. 1983) and Section 24 of Act 134 of 1979, codified at Ark. Stat. Ann. § 52-958 (Supp. 1983).

3. Frank E. Sims Construction Company - A Joint Venture obtained a coal mining Permit (No. 173A-2) from the Arkansas Department of Pollution Control and Ecology (ADPC&E) on February 13, 1981.

4. Permit No. 173A-2 was issued pursuant to the Arkansas Open Cut Land Reclamation Act of 1977, Act 336 of 1977, as amended, and the Initial Regulatory Program established by Public Law 95-87, the federal Surface Mining Control and Reclamation Act of 1977.

5. Permit No. 173A-2 was an "interim program" permit and one of the conditions accompanying the permit specifically states that it was issued for "such time as necessary for approval of a permanent program application submitted in compliance with the law."

No permanent program permit, pursuant to the Arkansas Surface Coal Mining and Reclamation Act of 1979, Act 134 of 1979, has ever been obtained by the permittee or any other party for this location. Several permanent program permit applications have been submitted by different operators on the site and by Hurley Enterprises, Inc., which is owned by Mr. Sterlin Hurley, one of the principals involved in the joint venture.

6. Failure to obtain a permanent program permit violates Section 13 of Act 134 of 1979, as amended, codified at Ark. Stat. Ann. § 52-947 (Supp. 1983).

7. Permittee has failed to adequately reclaim all of the areas affected by mining operations. Such failure violates Section 7 of Act 336 of 1977, codified at Ark. Stat. Ann. § 52-923 (Supp. 1983) and the conditions accompanying Permit No. 173A-2.

8. Since the Permittee failed to totally reclaim the affected area, violations of the Code have continued to be created and detected. Inspectors from ADPC&E have detected the following violations:

A. Failure to design, construct, and maintain diversion ditches in a manner which prevents the contribution of suspended solids to stream flow and runoff outside the permit area. Notice of Violation (N.O.V.) No. PHW-018-83 was issued to Frank E. Sims Construction Company on July 14, 1983. A Cessation Order was issued on November 2, 1983.

B. Failure to eliminate highwalls and return the area to its approximate original contour. N.O.V. No. PHW-019-83 was issued to Frank E. Sims Construction Company on July 14, 1983. A Cessation Order was issued on November 2, 1983.

C. Failure to cover the exposed coal seams and all other acid-forming combustible materials with at least three to four feet of nonstatic and noncombustible materials. N.O.V. No. PHW-022-84, 1 of 3 was issued to Black Diamond Energy, the operator, on May 23, 1984. A Cessation Order was issued on July 23, 1984.

D. Failure to monitor the ground and surface water and submit appropriate reports for each. N.O.V. No. PHW-022-84, 2 of 3 was issued to Black Diamond Energy, the operator, on May 23, 1984. A Cessation Order was issued on July 23, 1984.

E. Failure to pass all surface drainage through sediment ponds. N.O.V. No. PHW-022-84, 3 of 3 was issued to Black Diamond

Energy, the operator, on May 23, 1984. A Cessation Order was issued on July 23, 1984.

To date, none of these violations have been corrected.

9. Hurley Enterprises, Inc., the business owned by one of the principals involved in the Frank E. Sims Construction Company - A Joint Venture, has expressed interest in having its previously submitted permanent program permit application reviewed by ADPC&E and obtaining an appropriate permit.

IT IS THEREFORE ORDERED THAT:

1. Permit No. 173A-2 and the right to mine thereunder is hereby suspended unless and until:

(a) The Permittee, or any other individual or business entity participating in the joint venture, acting jointly and/or severally, obtains a permanent program permit from ADPC&E.

(b) The Permittee, or any other individual or business entity participating in the joint venture, acting jointly and/or severally, shall meet the following schedule for obtaining a permanent program permit:

May 10, 1985 ADPC&E conducts a completeness review of the application and advises Permittee of deficiencies.

July 1, 1985 Permittee submits all necessary information and proceeds with public notice requirements.

September 1, 1985 ADPC&E conducts a detailed review and advises Permittee of any additional deficiencies.

October 1, 1985 Permittee submits all additional information to ADPC&E.

October 8, 1985 Permittee submits adequate bond for the permitted area.

If and when a permanent program permit is obtained, it shall immediately supercede Permit No. 173A-2.

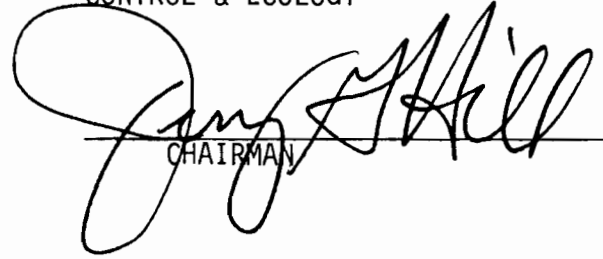
2. If any event occurs which causes or may cause delay by Permittee in meeting the deadlines in this Order, Permittee shall notify ADPC&E, in writing, as soon as reasonably possible after it is apparent that delay will result, describing in detail the anticipated length of delay, the precise cause of the delay and the measures being taken to minimize the delay.

3. The Department may grant an extension of any requirement or deadline created by this Order, provided sufficient cause therefore has been shown. Failure to notify the Department promptly, as provided in paragraph two (2) may be grounds for denying an extension.

4. If Permittee fails to meet any of the deadlines set forth above Permit No. 173A-2, shall be automatically revoked by this Order. As of the date of such failure, the Director shall give written notification thereof to Permittee.

SO ORDERED THIS 24 day of May, 1985.

ARKANSAS COMMISSION ON POLLUTION  
CONTROL & ECOLOGY

  
CHAIRMAN

ATTEST:   
Director  
Acting