

ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

IN THE MATTER OF:
H. E. CUMMINS & SONS CONSTRUCTION CO.
PERMITS NO. P 281-M-CO and P 335-M-CO

LIS 85-023

ORDER ON PENALTY ASSESSMENTS

This matter arises from a Request for Review by H. E. Cummins & Sons Construction Co. of proposed penalty assessments under the Arkansas Surface Coal Mining and Reclamation Act (Act 134 of 1979, as amended; Ark. Stat. Ann. §§ 52-935 to 52-971) and the regulations promulgated thereunder. This matter was the subject of a hearing on the 27th day of June, 1985, before James M. McHaney, Presiding Officer, and the Surface Mining Division appearing and being represented by Phillip Deisch herein and H. E. Cummins & Sons Construction Co. appearing not, although having been properly served with notice of the hearing, and from the testimony and other evidence introduced at the hearing, the Commission doth find:

1. H. E. Cummins & Sons Construction Co. was properly served with notice of the hearing held on June 27, 1985.

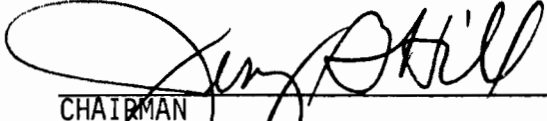
2. The recommendations of the Surface Mining Division set forth in the "Pre-hearing Conference Report" introduced as State's Exhibit No. 4 at the hearing, and a copy of which is attached hereto and is hereby incorporated herein, should be and are hereby adopted as the findings of the Commission in this matter.

BE IT, THEREFORE, ORDERED THAT:

1. H. E. Cummins & Sons Construction Co. is hereby assessed:
 - (a) For Notice of Violation SGU-013-84(1), a total of 16 points and no monetary penalty;
 - (b) For Notice of Violation SGU-019-84(2), a total of 30 points and no monetary penalty;
 - (c) For Notice of Violation SGU-021-84(1), a total of 0 points and no monetary penalty;
 - (d) For Notice of Violation SGU-010-85(2), a total of 41 points and a monetary penalty of \$2,100.00;
 - (e) For Notice of Violation SGU-010-85(1), a total of 41 points and a monetary penalty of \$2,100.00;
 - (f) For Notice of Violation SGU-018-84(1), a total of 0 points and no monetary penalty; and
 - (g) For Notice of Violation SGU-018-84(2), a total of 33 points and a monetary penalty of \$1,300.00.

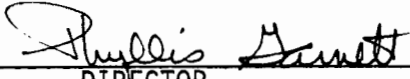
2. H. E. Cummins & Sons Construction Co. shall pay the total sum of \$5,500.00 for the assessments set forth above to the Arkansas Department of Pollution Control and Ecology within thirty (30) days of the date hereof.

SO ORDERED.

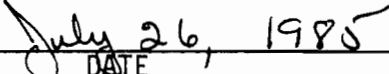


CHAIRMAN
ARKANSAS COMMISSION ON POLLUTION
CONTROL AND ECOLOGY

ATTEST:

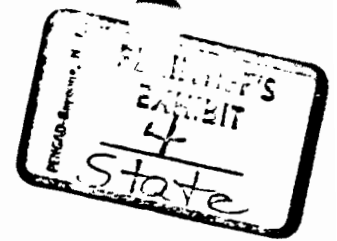


DIRECTOR



DATE

Pre-hearing Conference Report



A pre-hearing conference, concerning violations issued to H. E. Cummins' permits P281-P-CO and P335-M-CO was conducted at the State Office Building, Room 201, in Fort Smith, Arkansas at 10:00 a.m. on May 15, 1985. Representing the permittee was Mr. Jim Cummins, president of H. E. Cummins and Sons Construction Company, Inc. Representing the Department of Pollution Control and Ecology were Ms. Suzan Utley, inspector, and this writer.

Violations that were listed for discussion in this conference were as follows:

SGU-013-84, issued on P281-P-CO
SGU-019-84, issued on P281-P-CO
SGU-021-84, issued on P281-P-CO
SGU-010-85, issued on P281-P-CO

SGU-018-84, issued on P335-M-CO

Mr. Cummins elected to discuss only those violations that were assessed a monetary penalty. Those violations with monetary assessments were as follows:

SGU-013-84, 1 of 1	\$1,100 - 0
SGU-019-84, 2 of 2	\$1,300 - 0
SGU-021-84, 1 of 3	\$2,300 - 0
SGU-010-85, 1 of 2	\$2,700 - \$2,100
SGU-010-85, 2 of 2	\$2,600 - \$2,100
SGU-018-84, 1 of 2	\$2,100 - 0
SGU-018-84, 2 of 2	\$1,300 - \$1,300

SGU-013-84, 1 of 1 - Issued for failure to maintain traps and straw dikes on permit P281-P-CO on September 28, 1984. The violation was terminated on October 29, 1984 with normal compliance marked by the inspector. This writer recommends that one-half of the 31 points be reduced to a total of 16 points resulting in no monetary penalty.

SGU-019-84, 2 of 2 - Issued on October 29, 1984 for placement of toxic- and/or acid-forming materials on diversion dike. The extent of damage was reevaluated and reduced from 11 points to 8 points due to the very minor sized area of the material. With this 3 point reduction, the total points will now stand at 30 which is no monetary penalty.

SGU-021-84, 1 of 3 - Issued for failure to monitor surface water on permit P281-P-CO. The violation was terminated November 19, 1984 with rapid compliance marked by the inspector. This writer recommends that the 43 points be reduced to zero resulting in no monetary penalty. Mr. Cummins stated vandalism had resulted in loss of records and he was unaware when the last samples had been monitored. Negligence was reduced from 21 points to 13 points, still in the knowing category. The total would then have been 35 points for a \$1,500 monetary assessment. This in turn would be reduced to zero for no monetary penalty.

Other Action on P281-P-CO

SGU-010-85, 2 of 2 - Issued for exceeding effluent limitations on permit P281-P-CO on March 26, 1985. Mr. Cummins argued against the probability of occurrence being maximized. Since all effluent parameters had been exceeded, the points were not reduced. Mr. Cummins indicated that negligence should be reduced due to presence of hay bales. The negligence points recognized as a maintenance problem and since Ms. Utley stated no new bales had been installed, the negligence was not reduced by argument. Since a cessation order is being contested, six points (five from history and one from negligence) were reduced from the overall point total. The total points finalized from this conference were 41 which carries a monetary assessment of \$2,100. Mr. Cummins indicated that he would contest this determination. ✓

SGU-010-85, 1 of 2 - Issued on March 26, 1985 for failure to pass through sediment pond on permit P281-P-CO. Mr. Cummins did not present any convincing argument against the points assigned to the worksheet, thus no points were reduced. The history points were reduced by five since a cessation was being contested, thus the final points from this determination will be 41 for a monetary penalty of \$2,100. Mr. Cummins indicated that he would contest this determination. ✓

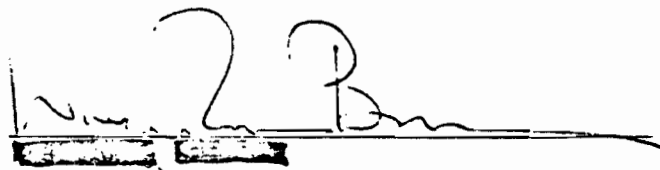
Section 845.13(b)(4) Action on P335-M-CO

SGU-018-84, 1 of 2 - Issued on October 29, 1985 against permit P335-M-CO for failure to submit letter of temporary cessation. The violation was terminated November 29, 1984 with rapid compliance marked by the inspector. This writer recommends that all of the points (41) be reduced to zero resulting in no monetary assessment.

SGU-018-84, 2 of 2 - Failure to follow the mining plan. Each point category was originally assessed low; however, the history points (21) accounted for the monetary penalty. There was no convincing argument provided concerning history, thus the penalty stands. Mr. Cummins indicated that he would request a hearing on this determination.

Summary

Of the seven penalty violations reviewed, four were reduced to zero, and three were reduced to a monetary penalty of \$5,500 total.


 _____ Date 5/15/85
 SURFACE MWWG DIVISION

10/2/84 MB

Assessment Worksheet

NOV # SGU-013-84

CO # NA
P281-M-CO

Name of Company H. E. Cummins & Sons Construction Company

Violation # 1 of 1 POINTS

1.	History of previous violations	<u>6 NOVs *</u>	<u>6</u>
2.	Seriousness (either A or B)		
	A. (1) Probability of occurrence	<u>5</u>	
	(2) Extent of potential of actual damage	<u>8</u>	
	B. Obstruction to enforcement	<u> </u>	
	Total Seriousness		<u>13</u>
3.	Negligence		<u>12</u>
4.	Good Faith		<u> </u>
	TOTAL POINTS		<u>31</u>
	ASSESSMENT	<u>\$1,100-0-</u>	<u>16</u>

MB
5/15/85

- *PHW-054-83, dated 10/27/83
- PHW-055-83, dated 10/27/83.
- PHW-060-83, dated 11/29/83.
- PHW-061-83, dated 11/29/83.
- PITW-003-84, 1 of 1, dated 1/24/84.
- FDS-013-84, 1 of 1, dated 4/30/84.

Assessment Worksheet

NOV # SGU-019-84

CO # NA
P281-P-CO

Name of Company H. E. Cummins & Sons Construction Co, Inc

Violation # 2 of 2 POINTS

1.	History of previous violations	5 NOV's *	<u>5</u>
2.	Seriousness (either A or B)		
	A.	(1) Probability of occurrence	<u>5</u>
		(2) Extent of potential of actual damage	<u>8</u> ^{5/15/85} _{MS}
	B.	Obstruction to enforcement	<u> </u>
	Total Seriousness		<u>16</u> ¹³
3.	Negligence		<u>12</u>
4.	Good Faith		<u> </u> ^{5/15/85} _{MS}
TOTAL POINTS			<u>33</u> ³⁰ _{MS}
ASSESSMENT			<u>\$1,300 - 0 -</u>

- * PHW-060-83, dated 11/29/83.
- PHW-061-83, dated 11/29/83.
- PHW-003-84, 1 of 1, dated 1/24/84.
- FDS-013-84, 1 of 1, dated 4/30/84.
- SGU-013-84, 1 of 1, dated 9/29/84.

Assessment Worksheet

NOV # SGU-021-84

CO # NA
P281-P-CO

Name of Company H.E. Cummins & Sons Construction Co, Inc

Violation # 1 of 3

POINTS

1. History of previous violations 7 NOVs *

7

2. Seriousness (either A or B)

A. (1) Probability of occurrence _____

(2) Extent of potential of actual damage _____

B. Obstruction to enforcement 15

Total Seriousness

15 ^{TMB} 5/15/85

3. Negligence

21 ¹³

4. Good Faith

0 ^{TMB} 5/15/85

TOTAL POINTS

ASSESSMENT

\$35
\$1500
\$2300 - 0 -

Rapid Compliance

- * PHW-060-83, dated 11/29/83.
- PHW-061-83, dated 11/29/83.
- PHW-003-84, 1 of 1, dated 1/24/84.
- FDS-013-84, 1 of 1, dated 4/30/84.
- SGU-013-84, 1 of 1, dated 9/29/84.
- SGU-019-84, 1 thru 2, dated 10/29/84.

ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
SURFACE MINING AND RECLAMATION DIVISION

MEMORANDUM

TO: Flyod G. Durham, Chief
FROM: Wayne Van Buren, Geologist *WVB*
DATE: November 20, 1984
SUBJECT: Statement of Good Faith for H. E. Cummins & Sons Construction Company, Inc., permit #P281-P-CO.

I have assessed Notice of Violation SGU-021-84, 1 of 3, dated November 5, 1984. The abatement date of the violation was December 5, 1984, and at the time of the assessment, November 20, 1984, the violation had been terminated as of November 19, 1984, with rapid compliance affixed. The violation was assessed for 43 points which carries a penalty of \$2,300. According to Section 845.13 (b)(4), the Director shall subtract points based on the degree of good faith as follows:

"Rapid compliance . . . up to all points assessed."

Your attention to this matter would be greatly appreciated.

Assessment Worksheet

NOV # SGU-010-85

CO # NA
P281-P-CO

Name of Company H. E. Cummins & Sons Construction Company

Violation # 1 of 2

		POINTS
1.	History of previous violations <u>4 NOVs, + CO*</u>	11 <u>6</u>
2.	Seriousness (either A or B)	<u>5/15/85</u>
	A. (1) Probability of occurrence <u>15</u>	<u>7/13</u>
	(2) Extent of potential of actual damage <u>8</u>	
	B. Obstruction to enforcement <u> </u>	
	Total Seriousness	<u>23</u> <u>5/15/85</u>
3.	Negligence <u>CO untested</u>	13 <u>12</u>
4.	Good Faith	

TOTAL POINTS 47 41

ASSESSMENT \$2700 \$2100

5/15/85
7/13

- * FDS-013-84, 1 of 1, dated 4/30/84.
- SGU-013-84, 1 of 1, dated 9/28/84.
- SGU-019-84, 1 thru 2, dated 10/29/84.
- SGU-021-84, 1 thru 3, dated 11/5/84, (3 of 3 vacated 1/22/85).

CO-SGU-021-84, 2 of 3, dated 2/12/85.

4/11/85 W

Assessment Worksheet

NOV # SGU-010-85

CO # NA
P281-P-CO

Name of Company H. E. Cummins & Sons Construction Company

Violation # 2 of 2

POINTS

1. History of previous violations	6 NOVs, + CO * contested	11 6 5/14/85
2. Seriousness (either A or B)		
A. (1) Probability of occurrence	<u>15</u>	
(2) Extent of potential of actual damage	<u>8</u>	
B. Obstruction to enforcement	<u> </u>	
Total Seriousness		<u>23</u>
3. Negligence		<u>12</u>
4. Good Faith		<u> </u>
	TOTAL POINTS	<u>46</u> 41
	ASSESSMENT	<u>\$2,600</u> \$2,100

3/15/85
TMB

* FDS-013-84, 1 of 1, dated 4/30/84.
 SGU-013-84, 1 of 1, dated 9/28/84.
 SGU-019-84, 1 thru 2, dated 10/29/84.
 SGU-021-84, 1 thru 3, dated 11/5/84, (3 of 3 vacated 1/22/85).

CO-SGU-021-84, 2 of 3, dated 2/12/85.

Assessment Worksheet

NOV # SGU-018-84

CO # NA

P335-M-CO

Name of Company HE Cummins

Violation # 1 of 2 POINTS

1. History of previous violations 6 NOV's ; 3 CO's * 21

2. Seriousness (either A or B)

A. (1) Probability of occurrence _____

(2) Extent of potential of actual damage _____

B. Obstruction to enforcement 8

Total Seriousness 8

3. Negligence 12

4. Good Faith _____

TOTAL POINTS

ASSESSMENT

~~41~~ 0
\$2,100-0- 3/15/85
 7/13

* MJB-002-83, dated 11/29/83.

MJB-003-83, dated 11/29/83.

FDS-001-84, 1 thru 3, 3/6/84.

FDS-009-84, 1 of 1, dated 3/6/84. Ten-Day Notice

CO-FDS-001-84, 1 of 3, dated 6/4/84.

CO-FDS-001-84, 3 of 3, dated 6/4/84.

CO-FDS-009-84, 1 of 1, dated 6/4/84.

Assessment Worksheet

NOV # SGU-018-84
CO # NA
P335-M-CO

Name of Company HE Cummins

Violation # 2 of 2 POINTS

- 1. History of previous violations 6 NOV's ; 3 COs * 21
- 2. Seriousness (either A or B)
 - A. (1) Probability of occurrence _____
 - (2) Extent of potential of actual damage _____
 - B. Obstruction to enforcement 6
 - Total Seriousness 6
- 3. Negligence 6
- 4. Good Faith _____

TOTAL POINTS 33
ASSESSMENT \$1,300

* MJB-002-83, dated 11/29/83.
MJB-003-83, dated 11/29/83.
FDS-001-84, 1 thru 3, 3/6/84.
FDS-009-84, 1 of 1, dated 3/6/84. Ten-Day Notice
No change
5/15/85 MJB

CO-FDS-001-84, 1 of 3, dated 6/4/84.
CO-FDS-001-84, 3 of 3, dated 6/4/84.
CO-FDS-009-84, 1 of 1, dated 6/4/84.