

MINUTE ORDER NO. 86-02

Revocation, LIS 85-053
PAGE 1 OF 1

The Commission hereby authorizes the Chairman to sign and issue the Order of Revocation, LIS 85-053, attached hereto.

COMMISSIONERS

DB
OK
AKW
AKW
AKW
AKW
AKW
AKW
AKW
AKW

James Hill
CHAIRMAN

SUBMITTED BY: Martha M. Adcock DATE PASSED: 1-24-86

BEFORE THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

IN THE MATTER OF:
WAYNE E. HESTER
PERMIT NO. P-348-M-CO

LIS 85-053

ORDER OF REVOCATION

This Order of Revocation is issued by the Commission on Pollution Control and Ecology (Commission) pursuant to the authority of the Arkansas Surface Coal Mining and Reclamation Act of 1979, Act 132 of 1979, as amended, codified at Ark. Stat. Ann. §§ 52-935 to 52-971 (Supp. 1985) and the Arkansas Surface Coal Mining and Reclamation Code. An Order to Show Cause was issued to Wayne E. Hester, permittee, on October 24, 1985. Pursuant to Section 843.14(b) of the Code, a copy of said Order was sent to Hester by certified mail No., P 612 669 971, and was received by Hester on October 26, 1985. A hearing was held at the Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas on November 26, 1985, at 10:00 a.m. The permittee did not appear. Based on the evidence produced at that hearing, the Commission makes the following Findings of Fact:

1. Wayne E. Hester obtained a coal mining permit, No. P-348-M-CO from ADPC&E on June 27, 1984. The name of the mine was Vesta Project No. 1, covering 19.15 acres and located in Franklin County, Arkansas. Said permit is to automatically expire on June 27, 1989.

2. Since August, 1984, the permittee has consistently failed to conduct his mining operations in compliance with the standards established in the Act and the Code. Permittee has demonstrated a pattern of violations by failing to 1) adhere to the requirements related to the protection of the surface and groundwaters of the State, 2) follow the requirements related to protection and maintenance of topsoil, 3) take the necessary measures to timely reclaim the areas disturbed by mining, 4) pay all fines and fees in a timely fashion, and 5) respond in a timely manner to Notices of Violations and Cessation Orders.

3. Permittee has demonstrated a pattern of violations by failing to adhere to the requirements related to the protection of the State's surface and groundwaters. Seven different violations have been detected in the past year. They include:

(a) Pursuant to a Quarterly Inspection by ADPC&E employees, Notice of Violation FDS-031-84, 5 of 8 was issued on August 14, 1984 for failing to maintain adequate vegetation on the embankment of sediment pond number 1. Said omission violates Sections 816.46(s) and 816.49(e) of the Code. After the permittee failed to make the necessary corrections, a Cessation Order was issued on October 16, 1984. Subsequent inspections on November 2, 1984, December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(b) Pursuant to a Quarterly Inspection by ADPC&E employees,

Notice of Violation FDS-031-84, 6 of 8 was issued on August 14, 1984 for failing to maintain and construct the necessary temporary diversions in violation of Section 816.43 of the Code. This failure to construct and maintain the temporary diversions allows contaminated water to flow off the permit area. After the permittee failed to make the necessary corrections, a Cessation Order was issued on October 16, 1984. Subsequent inspections on November 2, 1984, December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985, and May 15, 1985 revealed that the noncompliant conditions still existed.

(c) On September 27, 1984, ADPC&E employees inspected the permit area and found that all surface drainage from the area disturbed by mining was not being passed through a sedimentation pond in violation of Section 816.42 of the Code. A Notice of Violation, WVB-005-84, 1 of 4 was issued. When permittee failed to correct the noncompliant conditions, a Cessation Order was issued on November 2, 1984. Subsequent inspections on December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(d) On the September 27, 1984 inspection, ADPC&E employees discovered that the permittee had failed to protect the stream buffer zone in violation of Section 816.57 of the Code. The inspector noted that breaches in temporary diversion number 2 had allowed acid and toxic forming materials from the spoil pile and exposed coal seams to

deposit on the 100 foot stream buffer zone of Turkey Creek. A Notice of Violation, WVB-005-84, 4 of 4 was issued. When the permittee failed to correct the noncompliant conditions, a Cessation Order was issued on November 2, 1984.

Subsequent inspections on December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985, and May 15, 1985 revealed that the noncompliant conditions still existed.

(e) On December 21, 1984, ADPC&E employees inspected the permit area and discovered that the permittee had failed to monitor the surface water in accordance with the approved permit and Sections 816.42(a)(7), 816.52(b)(1) and 771.19 of the Code. A Notice of Violation, SGU-032-84, 6 of 8 was issued. When the permittee failed to make the necessary corrections, a Cessation Order was issued on February 12, 1985. Subsequent inspections on March 15, 1985, April 11, 1985, and May 15, 1985 revealed that the noncompliant conditions still existed.

(f) On the December 21, 1984 inspection, ADPC&E employees also discovered that the permittee had failed to monitor the groundwater in violation of Sections 771.19, and 816.52(a)(1) of the Code. A Notice of Violation, SGU-032-84, 7 of 8 was issued. When the permittee failed to make the necessary corrections, a Cessation Order was issued on February 12, 1985. Subsequent inspections on March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(g) On February 12, 1985, the area was again inspected and the permittee was issued Notice of Violation SGU-003-85, 2 of 2 for failing to examine sediment pond number 1 on a quarterly basis to protect against structural weakness, erosion and other hazardous conditions. Such failure violates Section 816.46(t) of the Code. When the permittee failed to make the necessary corrections, a Cessation Order was issued on March 15, 1985. Subsequent inspections on April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

4. Permittee has also demonstrated a pattern of violations by repeatedly violating the same or similar requirements of the Code in regard to the protection and maintenance of topsoil.

(a) Notice of Violation FDS-031-84, 1 of 8, was issued on August 14, 1984 for placing topsoil stockpiles in undesignated areas in violation of Section 771.19 of the Code. When the permittee failed to correct the problem, a Cessation Order was issued on October 16, 1984. Subsequent inspections on November 2, 1984, December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(b) Notice of Violation FDS-031-84, 2 of 8 was issued on August 14, 1984 for failing to protect topsoil stockpiles from wind and water erosion in violation of Section 816.23(b) of the Code. When the permittee failed to correct the problem, a Cessation Order was issued on October 16,

1984. Subsequent inspections on November 2, 1984, December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(c) Notice of Violation FDS-031-84, 7 of 8 was issued on August 14, 1984 for failing to remove topsoil on an area before beginning mining operations in violation of Section 816.22(a) of the Code. When the permittee failed to correct the problem, a Cessation Order was issued on October 16, 1984. Subsequent inspections on November 2, 1984, December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(d) Notice of Violations SGU-032-84, 2 of 8 was issued on December 21, 1984 for failing to clearly mark all topsoil stockpiles in violation of Section 816.11(g) of the Code. When the permittee failed to correct the problem, a Cessation Order was issued on February 12, 1985. Subsequent inspections on March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

5. Permittee has demonstrated a pattern of violations by repeatedly violating the same or similar requirements of the Code in regard to reclamation of the disturbed area.

(a) Pursuant to a Quarterly Inspection by ADPC&E employees,

Notice of Violation FDS-031-84, 8 of 8, was issued on August 14, 1984 for mining beyond the permit boundaries in violation of Sections 771.19 and 771.11 of the Code. The remedial action required to correct this problem is to reclaim the area illegally mined. After the permittee failed to correct the problem, a Cessation Order was issued on October 16, 1984. Subsequent inspections on November 2, 1984, December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant condition still existed.

(b) Pursuant to an inspection by ADPC&E employees, Notice of Violation SGU-032-84, 3 of 8 was issued on December 21, 1984 for failing to file a letter of intent to cease or abandon the mining operations and/or the reclamation operations in violation of Section 816.131(b) of the Code. After the permittee failed to submit the necessary information to correct the violation, a Cessation Order was issued on February 12, 1985. Subsequent inspections on March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant condition still existed.

(c) Notice of Violation SGU-032-84, 4 of 8 was issued on December 21, 1984 for failing to conduct reclamation activities in a contemporaneous manner in violation of Sections 816.100 and 771.19 of the Code. After the permittee failed to conduct the necessary reclamation activities, a Cessation Order was issued on February 12, 1985. Subsequent inspections on March 15, 1985, April 11,

1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(d) Notice of Violation SGU-032-84, 5 of 8 was issued on December 21, 1984 for failing to reclaim the area by covering all exposed coal seams and stockpiles which can form acid or toxic-forming materials with a minimum of four feet of nontoxic, noncombustible material in violation of Sections 816.103(a) and 816.48 of the Code. After the permittee failed to apply the appropriate cover, a Cessation Order was issued on February 12, 1985. Subsequent inspections on March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(e) Notice of Violation SGU-032-84, 8 of 8 was issued on December 21, 1984 for failing to reclaim the drill holes with the appropriate casing and/or seal in violation of Sections 816.14-S, 816.15 and 771.19 of the Code. After the permittee failed to make the necessary corrections, a Cessation Order was issued on February 12, 1985. Subsequent inspections on March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

6. Permittee has also demonstrated a pattern of violations by repeatedly failing to pay all uncontested and assessed fines and fees in a timely manner as follows:

(a) Two thousand four hundred dollars (\$2,400.00) for Notice of Violation WVB-005-84, 1 of 4;

(b) One thousand five hundred dollars (\$1,500.00) for Notice of Violation WVB-005-84, 2 of 4;

(c) Two thousand nine hundred dollars (\$2,900.00) for Notice of Violation WVB-005-84, 4 of 4;

(d) Twenty-two thousand five hundred dollars (\$22,500.00) for the Cessation Order issued for failure to abate Notices of Violation WVB-005-84, 1 of 4 through 4 of 4;

(e) Three thousand six hundred dollars (\$3,600.00) for Notice of Violation SGU-032-84, 1 of 8;

(f) One thousand seven hundred dollars (\$1,700.00) for Notice of Violation SGU-032-84, 2 of 8;

(g) Two thousand dollars (\$2,000.00) for Notice of Violation SGU-032-84, 3 of 8;

(h) Four thousand one hundred dollars (\$4,100.00) for Notice of Violation SGU-032-84, 4 of 8;

(i) Three thousand dollars (\$3,000.00) for Notice of Violation SGU-032-84, 5 of 8;

(j) Two thousand four hundred dollars (\$2,400.00) for Notice of Violation SGU-032-84, 6 of 8;

(k) Two thousand two hundred dollars (\$2,200.00) for Notice of Violation SGU-032-84, 7 OF 8;

(l) One thousand seven hundred dollars (\$1,700.00) for Notice of Violation SGU-032-84, 8 of 8;

(m) Twenty-two thousand five hundred dollars (\$22,500.00) for the Cessation Order issued for failure to abate Notices of Violation SGU-032-84 1 of 8 through 8 of 8;

(n) Three thousand dollars (\$3,000.00) for Notice of Violation SGU-003-85, 1 of 2;

(o) Three thousand five hundred dollars (\$3,500.00) for Notice of Violation SGU-003-85, 2 of 2;

(p) Twenty-two thousand five hundred dollars (\$22,500.00) for the Cessation Order issued for failure to abate Notice of Violation SGU-003-85, 1 of 2 and 2 of 2; and

(q) Five hundred dollars (\$500.00) for the 1985 enforcement fee.

(r) The total amount of the uncontested and assessed fines and fees is one hundred and two thousand dollars (\$102,000.00).

7. Permittee has demonstrated a pattern of violations by repeatedly violating the same or similar requirements of Section 816 of the Code concerning identification signs, markers and disposal of non-coal waste.

(a) Notice of Violation FDS-031-84, 3 of 8 was issued on August 14, 1984 for failing to place a mine and permit

identification sign at each point of access to the permit area in violation of Section 816.11(c) of the Code. A Notice of Termination for this violation was issued on September 13, 1984.

(b) On February 12, 1985, permittee was issued Notice of Violation SGU-003-85, 1 of 2 for again failing to maintain mine identification signs in violation of Section 816.11(c) of the Code. When permittee failed to make the necessary corrections, a Cessation Order was issued on March 15, 1985. Subsequent inspections on April 11, 1985 and May 15, 1985 revealed that the noncompliant condition still existed.

(c) Notice of Violation FDS-031-84, 4 of 8 was issued on August 14, 1984 for failing to clearly mark the perimeter of the permit site in violation of Section 816.11(d) of the Code. After the permittee failed to make the necessary corrections, a Cessation Order was issued on October 16, 1984. Subsequent inspections on November 2, 1984, December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(d) Notice of Violation WVB-005-84, 2 of 4 was issued on September 27, 1984 for failing to conspicuously display warning and all clear signals and signs regarding blasting in violation of Sections 816.11(f) and 816.65(c) of the Code. After the permittee failed to make the necessary corrections, a Cessation Order was issued on November 2,

1984. Subsequent inspections on December 21, 1984, February 12, 1985, March 15, 1985, April 1, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(e) Notice of Violation WVB-005-84, 3 of 4 was issued on September 27, 1984 for failing to dispose of noncoal waste in a designated and approved area in violation of Section 816.89(a) of the Code. After the permittee failed to make the necessary corrections, a Cessation Order was issued on November 2, 1984. Subsequent inspections on December 21, 1984, February 12, 1985, March 15, 1985, April 11, 1985 and May 15, 1985 revealed that the noncompliant conditions still existed.

(f) Notice of Violation SGU-032-84, 1 of 8 was issued on December 21, 1984 for failing to clearly mark the buffer zone of Turkey Creek which adjoins the permit area in violation of Section 816.11(e) of the Code. After the permittee failed to make the necessary corrections, a Cessation Order was issued on February 12, 1985. Subsequent inspections on March 15, 1985, April 11, 1985, and May 15, 1985 revealed that the noncompliant conditions still existed.

8. Permittee has demonstrated a pattern of violations by failing to respond to Notices of Violation and Cessation Orders in a timely manner.

(a) After an inspection on August 14, 1984, eight Notices of

Violation were issued, FDS-031-84, 1 of 8 through 8 of 8. (These violations were previously discussed in paragraphs 4(a), 4(b), 7(a), 7(c), 3(a), 3(b), 4(c) and 5(a)).

Permittee failed to correct the noncompliant conditions addressed in seven of the NOV'S and after an inspection on October 16, 1984, a Cessation Order was issued.

(b) After an inspection on September 27, 1984, four Notices of Violation were issued, WVB-005-84, 1 of 4 through 4 of 4. (These violations were previously discussed in paragraphs 3(c), 7(d), 7(e), and 3(d)). Permittee failed to correct the noncompliant conditions addressed in the NOV's and after an inspection on November 2, 1984, a Cessation Order was issued.

(c) After an inspection on December 21, 1984, eight Notices of Violation were issued, SGU-032-84, 1 of 8 through 8 of 8. (These violations were previously discussed in paragraphs 7(f), 4(d), 5(b), 5(c), 5(d), 3(e), 3(f) and 5(e)). Permittee failed to correct the noncompliant conditions addressed in the NOV's and after an inspection on February 12, 1985, a Cessation Order was issued.

(d) After an inspection on February 12, 1985, two Notices of Violation were issued, SGU-003-85 1 of 2 and 2 of 2. (These violations were previously discussed in paragraphs 7(b) and 3(g)). Permittee failed to correct the noncompliant conditions addressed in the NOV's and after an inspection on March 15, 1985 a Cessation Order was issued.
