BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA

IN THE MATTER OF:

DAVID BECKMAN and ALAN BOYKO,	)	**Administrative Cause**
Petitioners,	)	**No. 21-047R**
	)	
vs.	)	
	)	
DEPARTMENT OF NATURAL RESOURCES,	)	**[Applicant Violator System**
Respondent.	)	**Listing]**

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH NONFINAL ORDER

Procedural Background and Jurisdiction

1. On September 17, 2021, David Beckman and Alan Boyko (hereinafter Petitioners) filed a Petition for Administrative Review of the Indiana Department of Natural Resources AVS Findings and Listings for David Beckman and Alan Boyko (hereinafter Petition) with the Natural Resources Commission (hereinafter Commission). Petitioners alleged the Department of Natural Resources (hereinafter Department) improperly listed Petitioners on the federal Applicant Violator System (hereinafter AVS). See Petition.
2. Petitioners seek an order removing them from the AVS list. See Id., p. 16.
3. By filing their Petition, Petitioners initiated a proceeding governed by Indiana Code 4-21.5-3, sometimes referred to as the Administrative Orders and Procedures Act (AOPA) and the administrative rules adopted by the Commission at 312 IAC 3-1 to assist with the implementation of AOPA. See IC 4-21.5-3-1, et seq.
4. Administrative Law Judge (ALJ) Dawn Wilson was appointed under IC 14-10-2-2 to preside over this matter on September 20, 2021.
5. Administrative review of this matter is permitted by 312 IAC 25-4-122.1.
6. The Commission has jurisdiction over the subject matter and over the person of this appeal.
7. The parties indicated at the prehearing conference held October 14, 2021 that they would discuss potential settlement without the need for a contested hearing. ALJ Wilson ordered the

parties to submit status reports by November 11, 2021 and by December 10, 2021 if the matter was not settled.

8. ALJ Wilson notified the parties on December 7, 2021 that she would be retiring from the Commission and the case would be assigned to a different ALJ. The parties were ordered to file additional status reports by January 10, 2022.
9. The parties reported engaging in settlement discussions in joint status reports filed with the Commission. In a report filed February 9, 2022, the parties requested a status conference with the new ALJ.
10. ALJ Elizabeth Gamboa was appointed by the Commission to preside over this matter in January, 2022.
11. At a telephonic status conference held March 24, 2022 the parties reported that settlement discussions had not been successful. A case management order, which included deadlines for filing dispositive motions and responses and replies thereto, was established at the conference.
12. Petitioners filed a motion for summary judgment and related materials on September 23, 2022. The Department filed its response to Petitioners' summary judgment motion on December 1, 2022. Petitioners filed a reply to the Department's response on December 14, 2022.
13. The motion for summary judgment was denied by order dated March 6, 2022. At a telephonic status conference held April 4, 2023, a case management order was established. By agreement of the parties, the administrative hearing was scheduled for October 24, 25 and 26, 2023.
14. The administrative hearing was held on October 24 and October 25, 2023 in a conference room at the Indiana Government Center South in Indianapolis, Indiana. Petitioners appeared at the hearing in person and by counsel, Carolyn McIntosh, Rebeka Singh, Sean Griggs and Jennifer Baker. The Department appeared by counsel, Ihor Boyko, and by Department representative Steve Weinzapfel.
15. The following witnesses testified in person at the administrative hearing: David Beckman, Matthew Ubelhor, Alan Boyko, Patricia Beard, and Clay Dayson. Rashda Butar testified via the Teams application.
16. The following exhibits were accepted into evidence at the administrative hearing: Petitioners' exhibits 1-31 and 33-35, Department's exhibits D, E, F, H, I, J, K,

Findings of Fact[1]

17. White Stallion Energy (WSE) is a holding company for companies engaged in the activity of surface mining in Indiana subject to the Department's regulatory authority. See testimony of David Beckman (Beckman testimony) and totality of the record.
18. WSE operated six mines before December 3, 2020: Friendsville, Eagle River, Antioch, Billings, Shamrock and Charger. Friendsville was operated by WSE directly. Solar Sources Mining, LLC, which was owned by WSE, operated Billings, Antioch, Shamrock and Charger. Eagle River Coal, LLC, an affiliate of which WSE was the majority shareholder, operated the Eagle River mine. See Exhibit 2.
19. Due to WSE's financial difficulties in 2020, WSE's lenders[2] (Lenders) were concerned that WSE's financing would need to be restructured. The Lenders considered requiring WSE to hire a third-party consulting firm to run the business as a condition of restructuring WSE's debt. See Beckman testimony.
20. Steve Chancellor (Chancellor), WSE's Chief Operating Officer, opposed hiring a consultant because he believed doing so would signal to the market that WSE was not doing well financially. Chancellor and the Lenders agreed that WSE would hire a temporary chief financial operator (CFO) instead of the consulting firm. A temporary CFO was hired but resigned in September 2020. See Id.
21. The Lenders insisted WSE hire a consulting firm as a condition of additional financing after September 2020. Lenders suggested WSE hire FTI Consulting (FTI), an international business advisory firm specializing in insolvency and bankruptcy support work. See Id.
22. The Lenders also required a subcommittee of WSE's operating board be appointed. The Board was comprised of Chancellor and two individuals appointed by Lenders, James Bunn II and Rashda Butar. See Id.
23. Buttar joined the executive committee of WSE's board of directors in October 2020. Her role on the committee was to be an independent voice to represent the debtor's interest. Bunn left the committee in December 2020. See Buttar testimony. There is no evidence that he was replaced.

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[1] A Finding of Fact more appropriately construed as a Conclusion of Law or a Conclusion of Law more appropriately considered a Finding of Fact shall be so considered.

[2] Beckman identified the "co-lenders" as Riverstone Partners and Summit Partners. See, Beckman testimony.

24. David Beckman is employed by FTI as a senior managing director. For the last several years, over half of Beckman's consulting work for FTI has been in the mining industry. He has substantial knowledge and experience as a restructuring advisor to several companies involved in coal mining. See Beckman testimony.
25. Alan Boyko is employed by FTI as a senior managing director. His primary area of work for FTI is corporate financing and restructuring. Boyko has worked on restructuring approximately twelve coal companies while employed by FTI. See Boyko testimony.
26. Chancellor executed an Engagement Letter ("Letter") with FTI on October 30, 2020. See Exhibit 1.
27. The Letter provides, in relevant part:

> FTI will provide David Beckman to serve as the Client's COO and Alan Boyko to serve to [sic] as the Client's CFO (collectively the "Temporary Officers") respectively, in connection with the Engagement. In addition, the COO shall also serve as a limited-voting manager of the Board (the "Specified Manager"); *provided, however,* that if the other Independent Managers are, due to an equality of votes, unable to reach a determination of a matter on which such Independent Managers (as defined below) are (or the Independent Committee (as defined below) is) solely entitled to vote, the Specified Manager shall cast the deciding vote on such matter. The Temporary Officers, as well as any additional Hourly Temporary Staff, (as defined below) shall have such duties as the Independent Committee may from time to time determine, and shall at all times report to and be subject to supervision by the Independent Committee. Without limiting the foregoing, the Temporary Officers, as well as any Hourly Temporary Staff, shall work with other senior management of the Client, and other professions, to provide the Services. The board of managers of the Client are referred to herein as the "Board" and all managers of the Board other than Steven E. Chancellor are referred to herein as the Independent Mangers [sic]" and any committee of the Board consisting only of the Independent Managers is referred to as the "Independent Committee".
>
> In addition to providing Temporary Officers, FTI may also provide the Client with additional staff (the "Hourly Temporary Staff" and, together with the Temporary Officers, the "Engagement Personnel") subject to the terms and conditions of this Agreement. To the extent that the Independent Committee decides to ask certain Hourly Temporary Staff to take on any other senior executive roles at the Client (collectively "Additional Temporary Officers") such Additional Temporary Officers will be provided the same protections as a provided to the Temporary Officers (as defined in Exhibit "A"). The Hourly Temporary Staff may be assisted by or replaced by other Engagement Personnels reasonably satisfactory to the Independent Committee, as required, who shall also become Hourly Temporary Staff for purposes hereof. . . . FTI will keep the Board reasonably informed as to

FTI's staffing and will not add additional Hourly/Temporary Staff to the assignment without the prior consent of the Independent Committee.

If cases under the Bankruptcy Code are commenced and our retention is approved, our role will include serving as COO and CFO, Specified Manager, Additional Temporary Officers and principal bankruptcy financial advisors to the debtors and debtors in possession in those cases under a general retainer, subject to court approval. Our role also will encompass all out-of-court planning and negotiations attendant to these tasks.

The Services we will provide in connection with the Engagement will encompass all services (a) normally and reasonably associated with this type of engagement as requested, (b) which the Engagement Personnel are able to provide, and (c) that are consistent with our ethical obligations (it is understood that the Services include: (i) supporting the Client, the independent Committee and the Client's Capital Markets advisors with any potential purchase or merger pursuits; (ii) negotiating (A) all contracts with Peabody Energy, (B) all contracts affecting the capital structure of the Client and its subsidiaries, (C) all material contracts, (D) all other strategic alternatives, (E) claim resolution pertaining to general unsecured creditors of the Client and (F) all related party contracts); (iii) controlling treasury management including final disbursements and capital expenditure approval, cash management/forecasting and budget development. With respect to all matters of our Engagement, we will coordinate closely with the Independent Committee as to the nature of the services that we will render and the scope of our engagement. Additionally, at the direction of the Independent committee, FTI shall negotiate, communicate and interface with the Client's stakeholders and investors.

If cases under the Bankruptcy Code are commenced, the engagement of FTI to perform the Services shall be subject to the approval of the Bankruptcy Court and shall be substantially as provided in this Agreement as modified by the retention order approved by the Bankruptcy Court. Client agrees, at Client's expense, to file an application (the "Application") to employ FTI as crisis and turnaround manager *nunc pro tunc* to Effective Date pursuant to § 363 of the Bankruptcy Code. The Client agrees to file all required applications, including the Application, for the employment or retention of FTI at the earliest practical time.

The Services do not include (i) audit, legal, tax, environmental, accounting, actuarial, employee benefits, insurance advice or similar specialist and other professional services which are typically outsourced and which shall be obtained directly where required by the Client at Client's expense; or (ii) investment banking, including valuation or securities analysis, including advising any party or representation of the Client on the purchase, sale or exchange of securities or representation of the Client in securities transactions. FTI is not a registered broker-dealer in any jurisdiction and will not offer advice or its opinion or any testimony on valuation or exchanges of securities or an any matter for which FTI is not appropriately licensed or accredited.

See Exhibit 1.

28. Beckman was given the title of WSE's COO and Boyko was given the title CFO. Normally, Beckman's and Boyko's titles would be Chief Restructuring Officer (CRO) and Assistant CRO. However, Chancellor requested they be given the titles COO and CFO out of concern the market would react negatively if restructuring officers were involved WSE. See Beckman testimony and Boyko testimony.
29. Beckman described his responsibilities as temporary CFO as limited to the "strategy side" of WSE's operations. He concentrated his efforts initially on working on a potential merger with Peabody Coal and attempting to execute a substantial supply contract with Duke Energy. See Beckman testimony.
30. Beckman reported to the independent committee. See Id.
31. Boyko concentrated his efforts on cash flow management. He made decisions on which venders would be paid and in general how money would be spent to comply with the Lenders' requirements. Boyko developed a working budget for WSE which was approved by the Lenders. Boyko was required to obtain approval from the Lenders for any expenditures over ten percent of the budgeted amounts. See Boyko testimony.
32. Beckman was not able to secure a merger with Peabody Coal or get a contract with Duke Energy. See Beckman testimony.
33. By the end of November, WSE "was dribbling coal to various industrial buyers" but had no liquidity to continue operating without further financing. Lenders refused additional financing unless WSE filed for Bankruptcy. See Boyko testimony.
34. On December 3, 2020, WSE and its subsidiaries filed a Bankruptcy Petition in the United States Bankruptcy Court, District of Delaware, (Bankruptcy Court) under Case No. 20-13037(LSS).[3] See Beckman testimony. WSE and the other entities involved in the bankruptcy petition will be referred to as "Debtors" throughout this order.

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[3]The Debtors included in the bankruptcy case are: WSE; Alchemy Fuels, LLC; Carbo*Prill, LLC; Chili Pepper Mines, LLC; Friendsville Mine LLC; Liberty Mine, LLC; Red Brush West, LLC; Solar Sources Mining, LLC; Trust Resources, LLC; Vigo Coal Land, LLC; Vigo Coal Operating Co., LLC; Vigo Coal Sales, LLC; Vigo Cypress Mine LLC; Vigo Equipment, LLC; Vigo Sunna, LLC; White Stallion - Eagle River, LLC; White Stallion – Solar, LLC; White Stallion Acquisition LLC; and White Stallion Holdings, LLC. See Exhibit 2.

35. All of the Debtors' employees, including Chancellor and Matthew Ubelhor, WSE's Vice President of Operations and General Manager, were terminated and all of WSE's operations stopped when the bankruptcy petition was filed. See Beckman testimony, Boyko testimony.
36. Because all of the employees had been terminated, Beckman acted as fiduciary on behalf of Debtors in the bankruptcy proceedings. See Beckman testimony.
37. Beckman prepared a "Declaration of David J. Beckman, Chief Operating Officer of White Stallion Energy, LLC, In Support of Debtors' Chapter 11 Petitions and First Day Motions" (Declaration) which was filed with the Bankruptcy Court on December 3. See Id. and Exhibit 2.
38. Beckman identified himself as COO of WSE in the Declaration and represented that he was "generally familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records." See Exhibit 2, page 2. Beckman also disclosed that WSE's 260 employees were terminated on December 2, 2020 but that some would be re-hired "to carry Debtors through the anticipated chapter 11 sale process and a limited number of mine-level employees to meet certain ongoing shipping operations primarily for the benefit of Debtors' key customer, Duke." See Exhibit 2, pages 8 and 10.
39. About ten individuals were re-hired after the bankruptcy petition was filed, including Ubelhor and John Harmon, WSE's Engineering Manager. See Beckman testimony.
40. Beckman and Boyko continued in their roles with WSE after the bankruptcy petition was filed. See Beckman testimony, Boyko testimony.
41. Debtors remained in possession of their assets and some business activity occurred during the bankruptcy proceedings. See Beckman testimony and Exhibit 7.
42. Debtors filed a motion on December 29, 2020 for an order authorizing the continued employment of FTI and designating David Beckman as COO and Alan Boyko as CFO effective as of the petition date. See Exhibit 3.
43. Beckman submitted a declaration in support of the December 29, 2020 motion in which he asserted that he and Boyko "have acquired significant knowledge of the Debtors and their business, and familiarity with the Debtors' financial affairs, debt structure, operations, and related matters" as a result of the pre-petition work they did for WSE. See Exhibit 4, pages 3-4.

44. The Bankruptcy Court authorized the continued retention of FTI and designation of Beckman and Boyko as COO and CFO, respectively, on January 19, 2021.
45. Boyko prepared the budget that was submitted to the court for approval. After the bankruptcy petition was filed, Debtors' use of cash collateral was limited to the amount in the court-approved budget. Further, Debtors could not make any payments on debt accrued pre-petition unless approved by the court. See Exhibit 7. In general, payment on pre-petition obligations was only permitted if the payment would increase the value of the asset included in the bankruptcy estate. See Beckman testimony.
46. On January 25, 2021, Beckman executed, as "Authorized Signatory" of WSE, a Coal Loading Agreement with Duke Energy, whereby WSE, through Solar Sources, agreed to load and transport 1,393,833.68 tons of coal owned by Duke but stockpiled at Solar Source's mines. See Exhibit 6. The Agreement was approved by the Bankruptcy Court on February 8, 2021. See Exhibit 8.
47. Patricia Beard is employed by the Department and is the Department's AVS Coordinator. After learning WSE had filed for bankruptcy, Beard reviewed the AVS to determine whether any changes to ownership or control of WSE's holdings had been reported to the Department. Beard determined that WSE's ownership and control information was outdated. See Beard testimony.
48. On March 15, 2021 Beard sent Beckman a letter informing him that WSE's "ownership and control" information on file with the Department may need to be updated. The letter provides that "[i]t is believed you acted in a manner according to the definition of "controller" under 30 CFR 701.5 and 312 IAC 25-1-32.5 in the operation of" WSE. See Exhibit 9. Beckman's name would therefore be added to the AVS as an undisclosed COO with no begin date indicated. Beckman was given thirty days within which to respond to the letter. See Beard testimony and Exhibit 9.
49. Terry Kissel "for White Stallion Energy" sent the Department "revisions to the Central Entity ID file" for Solar Sources Mining, LLC and Vigo Coal Operating Co. on March 25, 2021. The revisions listed Beckman and Boyko among the list of owners and controllers as Interim COO and Interim CFO respectively with a start date of October 1, 2020. See Exhibits 10 and 11.
50. Counsel for FTI responded to Beard's March 15, 2021 on April 13, 2021. FTI argued that Beckman had not owned or controlled WSE. See Exhibit 12.

51. Beard responded to counsel's letter on May 14, 2021. Beard maintained the position that Beckman met the definition of "control or controller" in 312 IAC 25-1-32.5. See Exhibit 13. Beard based her determination on the job titles and on the information in the bankruptcy filings. See Beard testimony.
52. Petitioners' counsel submitted an appeal of the AVS listing to Steve Weinzapfel, Director of the Department's Division of Reclamation, on June 21, 2021 on behalf of Beckman and Boyko. See Exhibit 16.
53. Weinzapfel denied the appeal by letter dated August 31, 2021. Weinzapfel included the following "notable findings" in the letter, in summary:

    1. Beckman identified himself as WSE's COO in filings the bankruptcy court;
    2. Beckman and Boyko were identified as COO and CFO, respectively, ownership and control documents received by the Department on March 29, 2021;
    3. Chancellor contracted with FTI Consulting which appointed Beckman COO of WSE and the bankruptcy court approved Beckman as COO of Debtors; and
    4. By executing a coal loading agreement between Duke Energy and Solar Sources Mining, "Beckman demonstrated operational control of the company."

    See Exhibit 17.
54. On September 17, 2021, Debtors filed a motion in the bankruptcy court to change Beckman's title to Chief Restructuring Office (CRO) and Boyko's title to Restructuring Finance Office (RFO). See Exhibit 21.
55. Buttar filed a consent in support of the September 17, 2021 motion in which she stated that neither Beckman nor Boyko is a permittee or operator of a surface coal mining operation. See Buttar testimony and Exhibit 18.
56. The Motion was granted by order dated October 26, 2021. The order provided in part:

    "By entering this order approving the Motion, this Court makes no findings or determination as to whether Mr. Beckman or Mr. Boyko has qualified or will qualify as a permittee, owner, controller, or operator of a surface coal mining operation under 312 IAC 25-1-32.5, 312 IAC 25-1-94, or the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S. C. § § 1201, *et. seq.,* or its implementing regulations."

    See Exhibit 22.

57. The bankruptcy court entered an order on October 29, 2021 authorizing the sale to Responsible Energy of the following WSE assets: Antioch mines, Charger mines, Friendsville mine, Wheatland Loadout, Cannelburg Wash Plant, Carbondale mine and Eagle River Mining Complex. Responsible Energy also assumed permits, as well as the reclamation violations associated with these assets. See Exhibit 23. The sale of these assets resulted in approximately 75% of WSE's reclamation obligations being assumed by Responsible Energy. See Beckman testimony
58. The order approving the sale indicated that WSE "ceased to comply in all material respects with certain applicable Environment, Health and Safety Laws with respect to the business and the Acquired Assets" due to lack of liquidity. Schedule 5.9(c), attached to the order, listed the Compliance with Legal Requirements issues. See Exhibit 23.
59. The evidence establishes that Beckman and Boyko did not start as COO and CFO of WSE until the Letter of Engagement between FTI and WSE was executed by Chancellor on October 30, 2020. See Exhibit 1. Thus, the "begin date" for Beckman and Boyko is October 30, 2020.
60. The pre-petition mining operations were supervised by Chancellor and Matt Ubelhor. John Harmon "handled the regulator aspects of the mining. The commercial department at WSE handled coal sales. See Beckman testimony.
61. Beckman and Boyko both denied having directly or indirectly conducted any excavation, extraction of coal, use of explosive blasting, coal preparation, coal loading, or construction of new roads. See Beckman testimony, Boyko testimony.
62. Prefiling, Ubelhor supervised all active mining operations and communicated mostly with the on-site mine managers and preparation facility managers. He reported directly to Chancelor. See Ubelhor testimony.
63. After December 3, 2020, Ubelhor had to ask Boyko or Beckman for permission to spend money on any non-routine items and staffing issues. See Ubelhor testimony.
64. Post-petition, coal from the Charger and Friendsville mines was sold to customers. Also, the coal at Shamrock Mine coal yard was dug, washed, and sold. No drilling or blasting occurred at the mines post-filing. See Ubelhor testimony.
65. Ubelhor did not have the funding to remediate any violations unless it was harm to life or property off-stream or downstream from the permit. At some point, water sampling was not permitted. See Ubelhor testimony.

66. Ubelhor was also directed to sell any WSE equipment that could be sold. See Id.
67. The evidence of whether Ubelhor reported to Boyko after the bankruptcy petition was filed is disputed. Ubelhor testified he reported to Boyko. Boyko, on the other hand, testified that while he met with Ubelhor on a regular basis, Ubelhor did not report to Boyko about mining operations.
68. It is not disputed that Ubelhor needed Boyko's approval before spending money on anything involving mining operations that was not routine. Approval for additional non-budget items, such as water testing, had to be requested from the Lenders and unsecured creditors by Boyko. See Ubelhor testimony, Boyko testimony.
69. WSE had one outstanding violation pre-petition but was working with the Department to resolve the issue. See Beard testimony.
70. Several violations occurred after the petition was filed. See Id. The Notices of Violations were sent to Harmon, the engineering manager, post-bankruptcy. See Id.
71. Ubelhor could not remedy any violations received from the Department unless the violation involved water going from a permit area to a public stream See Ubelhor testimony.
72. Ubelhor recalled that WSE had approximately 120 notices of violation that "we did nothing about." See Id.
73. The Department filed an administrative claim for penalties imposed on WSE and was awarded a compromised amount of $183,000 from the bankruptcy court. Fees are associated with the regulatory violations and payment of those fees would not have abated the violation/cessation orders issued by the Department. See Beard testimony, Testimony of Clay Dayson (Dayson testimony).
74. Clay Dayson is a mine inspector employed by the Department. He described a notice of violation involving a violation of a regulation of SMCRA, Indiana rules or of the requirements of the permit. A cessation order is generally a cease-and desist-order. Fines and penalties can be associated with either a notice of violation or a cessation order. See Dayson testimony.
75. Since December 3, 2020, Shamrock mine has been issued 29 violations and 30 cessation orders. Attempts were made until October 2021 to remedy violations having to do with water quality. Those efforts ceased in Fall, 2021. See Id.
76. Notices of violations were issued to Solar Sources after the sale of the mines to REO was approved. Dayson explained that it often it takes time to transfer the permit to the new owner

because of the requirements that must be met. It is typical for the new owner to act as a subcontractor under the permittee to conduct mining operations. Violations were issued against Solar Sources, which had been purchase by REO for "flyrock," or blasting debris travelling beyond the bonded area and for failure to remove prime farmland soils prior to mining. That these violations occurred indicates that mining activity was occurring. See Dayson testimony.

77. Petitioners were listed in the AVS in Indiana for two violations and several cessation orders. Exhibit D and Exhibit D-1 contain the listings for David Beckman on the AVS. Exhibit D was generated May 5, 2022 while Exhibit D-1 was generated October 6, 2023.
78. Boyko's listings are found in Exhibits E, generated May 5, 2022 and E-1, generated October 5, 2023.
79. The explanation given for the two lists for each petition was that the second was an updated version generated closer to the time of the hearing in this matter. See Beard testimony.[4]

Conclusions of Law

80. The "applicant/violator system" is an automated nationwide information system of information on applicants, permittees, operators, violations and related data maintained by the Office of Surface Mining Reclamation and Enforcement (OSMRE) to assist the states in implementing state and federal regulation of surface coal mining and reclamation. 312 IAC 25-1-10.5; 312 IAC 25-1-51.5.
81. The purpose of the AVS is to assist the OSMRE and states in making permit eligibility determinations for application of surface coal mining permits. *Applicant/Violator System (AVS)*, U.S. Department of the Interior Office of Surface Mining Reclamation and Enforcement, published at osmre.gov/avs. The AVS is used to identify violations of surface coal mining operations for delinquent abandoned mine land fees, unpaid federal or state civil penalties, unabated cessation orders, and air and water quality violations related to coal mining operations. *Energy Supply of Indiana, Inc. v. Department of Natural Resources,* 6 CADDNAR 13, 13-14 (1991).

[4] Exhibits D, D-1, E and E-1 all list entries from other states in addition to Indiana entries. The Administrative Law Judge stated at the hearing that only the listings for Indiana would be considered. The ALJ does not make any inferences from the fact that both Petitioners have entries involving states other than Indiana.

82. Under federal law, a new permit may not be issued to any applicant "who owns or controls mining operations having unabated or uncorrected violations anywhere in the United States until those violations are abated or corrected or are in the process of being abated or corrected to the satisfaction of the agency with jurisdiction over the violation." *Id.* When a permit application is submitted to the Department, the applicant must disclose all owners or controllers of the coal mine for which the permit is sought. See 312 IAC 25-4. If the owners are listed on the AVS, the permit could be denied.
83. Administrative review of the Department's ownership or control listing or finding is controlled by 312 IAC 25-4-122.1, which provides in part:

> (a) Whenever an ownership or control listing or finding is made by the department under section 114 of this rule, the applicant or a person with an interest that is or may be adversely affected may challenge the listing or finding by submission of a written explanation of the basis for the challenge, along with any evidence or explanatory materials, to the director.

84. A person challenging an AVS listing must prove by a preponderance of the evidence that the person either did not own or control the entire surface coal mining operation or relevant portion or aspect thereof or did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period. 312 IAC 25-4-122.2.
85. In meeting this burden of proof, the challenger must present reliable, credible and substantial evidence and any explanatory materials. Materials that may be submitted in response include, but are not limited to, the following:

> (1) Notarized affidavits containing specific facts concerning the duties performed for the relevant operation, the beginning and ending dates of ownership for the relevant operation, and the nature and details of any transaction creating or severing ownership or control of the operation.
> (2) Certified copes of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.
> (3) Certified copies of documents filed with or issued by any state, municipality, or federal governmental agency.
> (4) An opinion of counsel, when supported but the following:
>
> (A) Evidentiary materials.
> (B) A statement by counsel that he or she is qualified to render the opinion.
> (C) A statement that counsel has personally and diligently investigated the facts of the matter.

86. The Commission's review of the Department's decision is *de novo.*

87. Control or controller, for the purpose of coal mining permitting rules means:

1. A permittee of a surface coal mining operation.
2. An operator of a surface coal mining operation.
3. Any person who has the ability to determine the manner in which surface coal mining operation is conducted.

312 IAC 25-1-32.5. See also 310 CFR 701.5.

89. An "operator" is "any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth or from coal refuse piles by coal mining within twelve (12) consecutive calendar months in any one (1) location. 312 IAC 25-1-89.

88. "Owned or controlled" and "owns or controls" means any one or combinations of the relationships:

(1) A permittee of a surface coal mining operation.
(2) Based on instruments of ownership or voting securities, owning of record in excess of fifty percent (50%) of a person.
(3) Any other relationship that gives one (1) person authority, directly or indirectly to determine the manner in which an applicant, an operator, or other person conducts surface coal mining operation.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not, in fact, have the authority, directly or indirectly, to determine the manner in which the surface coal mining operation is conducted:

(1) An officer or director of the person.
(2) The operator of a surface coal mining operation.
(3) An ability to commit the financial or real property assets or working resources of a person.
(4) A general partner in a partnership.
(5) Based on the instruments of ownership or the voting securities of corporation, ownership of record of ten percent (10%) through fifty percent (50%) of the corporation.
(6) Ownership or control of coal to be mined by another person under a lease, sublease, or other contract where there is a right to receive the coal after mining or authorization to determine the manner in which that person or another person conducts a surface coal mining operation.

312 IAC 25-1-94

89. A surface coal mining operation is:

(1) An activity conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of IC 14-34-11, surface operations and surface

> impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. These activities include the following:
>
> > (A) Excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, hilltop removal, box cut, open pit, and area mining.
> > (B) The extraction of coal from a coal refuse pile.
> > (C) The use of explosives and blasting.
> > (D) In situ distillation or retorting.
> > (E) Coal preparation.
> > (F) The loading of coal for interstate commerce at or near the minesite.

312 IAC 25-1-145(1).

89. The definitions in both 312 IAC 25-1-32.5 and 312 IAC 25-1-94 are very broad. In addition, 312 IAC 25-1-32.5 contemplates a "per se" category controllers who are irrefutably presumed to control the violator whereas 312 IAC 25-1-94 creates "presumptive" categories of control. See, Curtz, Chauncy S.R. and Greenwell, Karen J (1991) *The Applicant Violator System Under SMCRA: Ownership and Control Regulations*, Journal of Natural Resources & Environmental Law, Vol. 6, Iss. 2, Article 2, pp 14-149 available at https://uknowledge.uky.edu/jnrel/vol16/iss2/2.
90. The term "person" includes any individual, partnership, association, society, joint venture, joint stock company, firm, company, corporation or other business organization. 312 IAC 25-1-103. Petitioners are "persons" as defined by 312 IAC 25-1-103.
91. Petitioners argue that the Department's decision on ownership or control was based solely upon the titles of COO and CFO given to Beckman and Boyko. Petitioners further argue that although they held these titles, they have rebutted the presumption of ownership or control under 312 IAC 25-1-94(b) through reliable, credible and substantial evidence.
92. The Department argues Petitioners are controllers as defined in 312 IAC 25-1-32.5 because they had the ability to determine the manner in which WSE's coal mining operations were conducted. The Department further argues that Petitioners have not rebutted the presumption of ownership or control set out in 312 IAC 25-1-94.
93. Coal mine operations include a number of activities apart from actually removing coal from the ground.

94. Surface coal mining operations continued, albeit at a slower rate, during the pre-petition period of October 30, 2020 through December 2, 2020. Coal continued to be removed from mines after the bankruptcy petition was filed. Those activities constituted coal mining activity.
95. Petitioners meet the definition of owner or controller set out in 312 IAC 25-1-32.5. The definition in this rule is not dependent on the particular title held by the person but rather the person's ability to determine the manner in which the coal mining operations are conducted.
96. Petitioners had the ability to determine the manner in which WSE's surface coal mining operations were conducted. Boyko set the budget for WSE pre-petition. Ubelhor was required to manage the operational mines within the parameters of the budget. Certainly, the amount of money one has available to conduct activities such as coal mining, coal removal, and on-going remediation would influence the manner in which those activities are conducted. Although the budget was subject to approval from the Lenders pre-petition, it was Boyko who developed the budgets and sought approval from the Lenders.
97. Beckman's ability to determine the manner in which WSE's coal mining operations were conducted is demonstrated by the evidence he executed the contract with Duke for the removal of coal to Duke. It is reasonable to conclude that had he not executed the contract, the activity would not have occurred.
98. The definition of owner or controller also applies to "any other relationship that gives one (1) person authority, directly or indirectly to determine the manner in which an applicant, an operator, or other person conducts surface coal mining operation." 312 IAC 25-1-94(a)(3). Beckman and Boyko provided information on WSE's operations to the lenders and the Bankruptcy Court. It is reasonable to conclude that the information provided by Petitioners influenced the decisions made by the Lenders and the Bankruptcy court. Thus, Petitioners were in a position to, at the very least, indirectly determine how the coal mining operations were conducted.
99. Beckman and Boyko both denied knowledge of WSE's coal mining operations in their testimony. However, in filings with the bankruptcy court, both were described as having significant knowledge of the Debtors and their business. Petitioners cannot now claim ignorance of the coal mining activities.
100. Further, Beckman and Boyko, as COO and CFO are presumed to be owners and controllers of WSE under 312 IAC 25-1-94.

101. Petitioners have not met their burden in demonstrating that they did not, in fact, have either direct or indirect authority to determine the manner in which WSE's mining operations were conducted.

NONFINAL ORDER

102. The Department's decision to list David Beckman in the AVS is affirmed.

103. The Department's decision to list Alan Boyko in the AVS is affirmed.

Dated: March 13, 2024

Elizabeth Gamboa, Chief Administrative Law Judge
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DISTRIBUTION

The foregoing is distributed to the parties as follows on March 13, 2024.

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A copy of the foregoing will also be distributed to the following in accordance with IC 4-21.5-3 or IC 5-14-3. *The parties need not serve pleadings, motions or other filings upon these persons.*

Steve Weinzapful, DNR Division of Reclamation

By: Scott Allen, Legal Analyst, Natural Resources Commission

BEFORE THE NATURAL RESOURCES COMMISSION
OF THE STATE OF INDIANA

FILED
MAR 27 2024
Natural Resources Commission
Division of Hearings

IN THE MATTER OF:

DAVID BECKMAN & ALAN BOYKO, Petitioners,	)	Administrative Cause Number: 21-047R
v.	)	
	)	*[Applicant Violator System]*
DEPARTMENT OF NATURAL RESOURCES, Respondent.	)	

OBJECTIONS TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH NON–FINAL ORDER

Petitioners David Beckman and Alan Boyko ("Petitioners"), by counsel, submit the following objections to the Findings of Fact and Conclusions of Law with Non-Final Order (the "Non-Final Order") entered on March 13, 2024 by the Chief Administrative Law Judge. These objections are filed pursuant to Indiana Code § 4-21.5-3-29(d) which provides:

> To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that: (1) identifies the basis of the objection with reasonable particularity; and (2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

The applicable regulation provides that: "[T]he objections shall be scheduled for argument before the commission committee established by subsection (d), simultaneously with the presentation by the administrative law judge of findings, conclusions, and a nonfinal order." 312 IAC 3-1-12(c)-(d). Petitioners respectfully request that the Natural Resources Commission reject the Non-Final Order as it fails to establish a factual or legal basis for continuing to list Petitioners on the Applicant Violator System ("AVS"). The Non-Final Order misinterpreted the law, it ignored and improperly weighed the facts, and it misapplied the law to those facts.

I. The Administrative Law Judge Misinterpreted 312 IAC 25-1-32.5

The Non-Final Order's errors begin with its misinterpretation of the substantive regulation at issue. The Non-Final Order misreads 312 IAC 25-1-32.5 to manufacture a definition of "control" that flouts the regulatory text and is so broad as to be absurd.

Citing Section 122.2 of DNR's regulations, the Non-Final Order correctly acknowledges that a "person challenging an AVS listing must prove by a preponderance of the evidence that the person either did not own or control the entire surface coal mining operation or relevant portion or aspect thereof." Non-Final Order ¶ 84 (citing 312 IAC 25-4-122.2). And Section 32.5 of DNR's regulations expressly defines what "control" means in Section 122.2: "Any person who has the ability to *determine* the manner in which a surface coal mining operation is conducted." 312 IAC 25-1-32.5 (emphasis added) (noting this definition applies "for purposes of ... 312 IAC 25-4-122.1 through 312 IAC 25-4-122.3).[1]

Remarkably, the Non-Final Order misread Section 32.5 to encompass any person who simply *influences* the manner in which the mine is operated. Finding (incorrectly) that Petitioners determined the "budget" for the mine, the Non-Final Order concluded that "Petitioners meet the definition of owner or controller" because "the amount of money one has available to conduct activities such as coal mining, coal removal, and on-going remediation would *influence the manner in which those activities are conducted.*" Non-Final Order ¶¶ 95–96 (emphasis added). Putting aside that Petitioners' involvement with the budgeting process did not influence mining activities, this invented standard ignores the fact that the regulation requires that a controller *determine* the manner of the mine's operation, not merely *influence* the manner of its operation. Even if *influence*

[1] 312 IAC 25-1-32.5's definition of "control or controller" also includes a surface coal mining operation's "permittee" and "operator," but there has never been any suggestion Petitioners fall into either of these categories. Furthermore, all Parties have agreed that the Petitioners were not and have never been "owners" of the surface coal mining operation. *See* Joint Stipulations, ¶6; David Beckman Hearing Test. 58:13-19; Alan Boyko Hearing Test. 20:23-21:5.

were the standard to show control (which it is not), influencing indicates that someone else—the person being influenced—is determining the manner of mining and is thus the controller.

The Non-Final Order interpretation, if upheld, would lead to absurd consequences. In bankruptcy cases of coal mining companies, it would include, for example, the bankruptcy court and the mine's lenders (whose decisions indisputably "influence" the mine's operations). And outside the bankruptcy context, it would include every officer, board member, and employee of the mine—all such individuals, after all, will inevitably "influence" how the mine operates. "Influence liability" is not the applicable standard and is wholly inconsistent both with DNR's longstanding practice and with the purpose of the AVS—which is to identify individuals with actual control and ultimate decision-making authority (not Petitioners here) who fail to discharge their responsibilities to ensure mines' compliance with environmental regulations.

Instead of creating a new control standard, the Administrative Law Judge should have limited Section 32.5 to apply to persons who, by their own actions, "*determine* the manner in which a surface coal mining operation is conducted." 312 IAC 25-1-32.5 (emphasis added). This standard fits with the regulation's text, for it focuses on the person's ability to "decide or settle ... conclusively and authoritatively" the manner of the mine's operations. *Determine*, American Heritage Dictionary (5th Ed. 2022), https://www.ahdictionary.com/word/search.html?q=determine. This interpretation also fits with the regulation's purpose. In contrast, the ALJ's decision directly contradicts the regulation's purpose by adding a person to the AVS where the person's decisions are specifically and judicially constrained by the control of U.S. bankruptcy laws and subject to the review and ultimate approval or denial of others. That context, applicable to Petitioners, demonstrates categorically that the person is *not* ultimately responsible for the mine's operations, does not determine the manner of those operations, and thus cannot

ensure the mine complies with the applicable regulations. Because the Non-Final Order rests on a flagrant error of law, it should be reversed.

II. The Non-Final Order Misinterpreted 312 IAC 25-4-122.2 and Therefore Applied an Erroneous Burden of Proof

The Non-Final Order also misinterpreted and misapplied Section 122.2's burden of proof. Section 122.2 requires an individual challenging an AVS listing "prove by a preponderance of the evidence" that the person does not determine the manner of the mine's operations. 312 IAC 25-4-122.2. Petitioners met this standard. Rather than applying the correct standard, the ALJ ignored the evidence presented and, instead, relied heavily on a presumption that was specifically countered by substantial *uncontroverted* evidence; namely, that "Beckman and Boyko, as [initially titled] COO and CFO are presumed to be owners and controllers of [White Stallion Energy] WSE under 312 IAC 25-1-94." Non-Final Order ¶ 100; *see also id.* ¶¶ 38, 42, 44.

This was a mistake that constitutes reversible error. Section 32.5—not the presumption in Section 94—applies here, for Section 32.5 *specifically* provides that its definition applies to Section 122.2. *See, e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (noting "it is a commonplace of statutory construction that the specific governs the general"). Further, it makes no sense to apply a "presumption" in the context of Section 122.2's "preponderance of the evidence" standard. That provision does not mention any presumption, but simply says the person must prove by that standard that he or she "does not own or control" the surface coal mining operation. 312 IAC 25-4-122.2.

Here, the evidence presented by Petitioners was not seriously challenged and established that they did *not* "control" the mining operation:

- Board resolution and Bankruptcy Court order changing Petitioners' original COO and CFO titles to CRO and RFO to reflect the *restructuring* nature of their employment. *See* Exs. 18 and 22.

- Testimony of Matt Ubelhor regarding his role in deciding to load and ship Duke Energy's stockpiles of coal. *See* Matthew Ubelhor Hearing Test. 174:18-22, 176:22-178:15.
- Testimony of WSE Independent Board member, Rashda Buttar, regarding the limited roles of Petitioners. *See* Rashda Buttar Hearing Test. 221:13-323:3, 227:15-229:20.
- Testimony of Alan Boyko about his need to receive approval from the WSE lenders and the Bankruptcy Court to spend any money. *See* Alan Boyko Hearing Test. 29:4-7, 31:17-19, 32:1-7, 36:3-6, 38:14-16, 44:14-45:8, 51:1-9, 59:10-13, 60:1-4.
- Testimony of David Beckman that Duke's coal was processed, loaded, and shipped under the control of WSE's Senior Vice President of Operations, Matt Ubelhor. *See* David Beckman Hearing Test. 107:11-108:4.
- Testimony of David Beckman about the signing of the loading agreement being a purely ministerial act so that WSE could meet its legal obligations under the contract with Duke Energy. *See* David Beckman Hearing Test. 108:5-12.
- Testimony of David Beckman that even with his signing of the loading agreement, the activities of loading and shipping coal owned by Duke Energy to Duke Energy could not take place without Bankruptcy Court approval. *See* David Beckman Hearing Test. 105:21-104; *see also* Hearing Ex. 8.

Moreover, Petitioners presented reliable, credible, substantial, and unrefuted evidence, in filings and at hearing, in each of the 312 IAC 25-4-122.2(c) categories documenting that they did *not* own or control WSE's surface mining operations. Petitioners provided notarized affidavits and direct testimony under oath, giving "specific facts concerning their duties" and the "nature and details" of their roles, evidencing their lack of ownership or control. *See* 312 IAC 25-4-122.2(c)(1); Exs. 16, 19. Petitioners provided a resolution passed by WSE's Executive Committee making it clear that Petitioners were not in control of surface coal mining operations and formally revising Mr. Beckman's title to CRO and Mr. Boyko's title to RFO, to align with their actual roles with WSE. *See* 312 IAC 25-4-122.2(c)(2); Hearing Ex. 18. The Bankruptcy Court approved Petitioners' corrected titles *retroactively to the date of Petitioners' engagement with WSE.* Hearing Ex. 22. Ms. Rashda Buttar, a member of WSE's Independent Committee as well as an attorney with experience in the coal mining industry, testified that, based on her personal knowledge and review of the facts, Petitioners have never controlled WSE's mining operations. *See* Rashda Buttar Hearing Test. 227:15-229:20, 230:11-21; *see also* Hearing Exs. 18, 20. Ms. Buttar's testimony meets the

requirements of 312 IAC 25-4-122.2(c)(4). *See* Rashda Buttar Hearing Test. 211:16-19, 213:19-20, 235:6-19.

The sworn testimony and the documents presented by Petitioners at the hearing were overwhelming. Even if the ALJ was entitled to rely on a presumption of control (which is not the case), the evidence supporting Petitioners was vast and rebutted any such presumption. It also fully rebutted the scant evidence proffered by DNR in support of a finding of control. Applying the correct preponderance of the evidence standard here compels the conclusion that the Petitioners did not control the mines or mining operations.

Indeed, in deciding to list Petitioners on the AVS, only one fact mattered to the DNR—was the individual in question an officer. Patricia Beard Hearing Test. 132-136 (generally), 136:6-12. The Non-Final Order (wrongly) relied on the definition of "owned or controlled" under 312 IAC 25-1-94(b), which includes a presumption that an officer has sufficient control over a business to include the officer on the AVS. Even if this presumption were applicable, Petitioners have an absolute right to provide evidence that rebuts the presumption. However, for reasons that have never been made clear, DNR has steadfastly refused to take proper account of the facts and evidence supporting Petitioners' lack of control justifying delisting Petitioners from the AVS. *Id.*; *see also* Hearing Exs. 12 and 16.

In short, while the Non-Final Order gives lip service to the preponderance of the evidence standard (*see* Non-Final Order, ¶ 84), it actually applies a much higher standard. In addition to incorrectly emphasizing Section 94's presumption, the Non-Final Order states that: "Petitioners have not met their burden in demonstrating that they did not, in fact, have either direct or indirect authority to determine the manner in which WSE's mining operations were conducted." Non-Final Order, ¶101. The standard reflected in paragraph 101 is substantially higher than a preponderance

of the evidence. In effect, it requires Petitioners to prove ("demonstrate") that they did not have "direct or indirect authority" to decide how "mining operations were conducted." *Id.* In contrast, the preponderance standard is met if the evidence shows that the fact at issue "is more likely than not" true. Because the Non-Final Order applied the wrong standard in weighing the evidence, it must be rejected.

III. The Non-Final Order Failed to Acknowledge that the Bankruptcy and Restructuring Issues Predominated and Circumscribed the Actions Available to Petitioners

The weight of the evidence clearly shows that the restructuring services provided by Petitioners to WSE were limited in scope and purpose. It is undisputed that: (a) before WSE filed its bankruptcy petition, WSE Chief Executive Officer and controlling owner, Steven Chancellor, and Mr. Matt Ubelhor, Senior Vice President of Operations, controlled all day-to-day surface coal mining operations (David Beckman Hearing Test. 59:9-15, 60:2-9; Alan Boyko Hearing Test. 24:9-12, 25:2-3; Non-Final Order, ¶ 60); (b) the Engagement Letter entered into between FTI Consulting, Inc. and WSE did not include mining operations within Petitioners' work scope (Hearing Ex. 1); (c) the WSE lenders' budgetary decisions placed severe constraints on the actions available to Petitioners (Alan Boyko Hearing Test. 13:8-15, 16:3-4, 16:5-21, 17:17-22, 44:14-45:8); and (d) post-petition, after the mining operations had been terminated (another undisputed fact), obtaining the approval of the Bankruptcy Court and the WSE lenders was mandatory before any significant action was taken regarding the business, the mines, or the company's finances (Alan Boyko Hearing Test. 26:18-27:2, 31:12-15, 36:7-11, 41:18-42:8, 44:14-45:8, 59:1-4; David Beckman Hearing Test. 68:22-66:5, 74:23-75:3, 75:16-76:23, 99:14-20, 108:5-12, 117:2-25, 120:6-17; Hearing Exs. 2, 5, 7, 8, 14, 15, 22, 23, and 34).

The Non-Final Order ignores the reality of the situation that resulted from WSE's decision in December 2020 to terminate operations and file for bankruptcy protection. This event was a

game-changer that turned the normal operation of the business on its proverbial head. Every WSE employee was terminated on the same day including all the management personnel and company officers. David Beckman Hearing Test. 68:7-13; Alan Boyko Hearing Test. 26:6-12, 28:9-13. All mining activities ceased the day WSE filed for bankruptcy. David Beckman Hearing Test. 68:6-7. The Bankruptcy Court's appointment of Petitioners to preserve and manage the assets of WSE, pursuant to its jurisdiction, did not and does not constitute "control" over the defunct mining operations. David Beckman Hearing Test. 36:1-4, 57:16-18, 127:6-7; Alan Boyko Hearing Test. 23:12-21, 29:1-3, 42:14-18.

The WSE operations prior to December 2, 2020 were fundamentally different from the way the company was run under the supervision of the Bankruptcy Court. The DNR ignored these critical and outcome-determinative changes in the business including the fact that no coal was mined post-petition. David Beckman Hearing Test. 68:6-7, 68:25-69:3. The Non-Final Order fails to consider and rectify the injustice perpetuated by DNR in attempting to make Petitioners personally responsible for matters that were objectively and completely out of their control. The evidence in favor of the Petitioners is too overwhelming to survive the scrutiny that this Commission should apply in reviewing the Non-Final Order.

IV. The Administrative Law Judge Ignored Established Legally Relevant Facts

The Non-Final Order is filled with speculation rather than true fact finding. The uncontroverted evidence in support of Petitioners established legally relevant facts which the ALJ ignores. For example, in paragraph 98, the Non-Final Order states:

> Beckman and Boyko provided information on WSE's operations to the lenders and the Bankruptcy Court. It is reasonable to conclude that the information provided by Petitioners influenced the decisions made by the Lenders and the Bankruptcy court. Thus, Petitioners were in a position to, at the very least, indirectly determine how the coal mining operations were conducted.

Putting aside that providing information is not evidence of control, and that this finding concedes that it was the lenders and the Bankruptcy Court that were the true decision makers, the legally relevant facts are that: (a) the WSE Engagement Letter signed in 2020 directed Petitioners to provide financial restructuring services and did not include any involvement in mining operations (Hearing Ex. 1); (b) the Bankruptcy Court order approving the retention of Petitioners to manage the gathering and preservation of company assets did not authorize Petitioners to undertake mining operations (Hearing Ex. 5); and (c) the critical decisions about the Duke-WSE coal loading agreement were made by Matthew Ubelhor, Senior Vice President of Operations, both pre-and post-bankruptcy, not Petitioners (Matthew Ubelhor Hearing Test. 174:18-22, 176:22-178:15; David Beckman Hearing Test. 68:7-13; Alan Boyko Hearing Test. 26:6-12, 28:9-13). Moreover, throughout these proceedings, including at the time of the hearing, Mr. Steven Chancellor remained the owner of WSE's ultimate parent company, American Patriot Holdings, LLC (Hearing Exs. 10, 11, 17, Att. I.B.4), and the undisputed party responsible for the creation of the unaddressed reclamation obligations that are the driving factor behind the DNR's search for a responsible party. The unrefuted evidence is that Petitioners were not authorized to undertake mining operations or to decide how mining operations were conducted. For no apparent reason, the Non-Final Order completely ignores this weighty evidence and instead reaches a speculative and erroneous conclusion that is directly opposed to the record evidence.

CONCLUSION

Based on the foregoing objections, Petitioners respectfully request that the Natural Resources Commission reject the Non-Final Order because it misinterpreted the law, ignored key facts, improperly weighed the facts, and misapplied the law to those facts.

Respectfully submitted,

/s/ Jennifer C. Baker

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CERTIFICATE OF SERVICE

I certify that on March 27, 2024, a copy of the foregoing Objections was served by electronic mail on the following:

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