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## CHAPTER ONE

R645-301-100 (GENERAL CONTENTS)

### R645-301-100 General Contents

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**INCORPORATED**

**OCT 03 2017**

Div. of Oil, Gas & Mining
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Plate 1-1, SCA Permit Area Legal Description and SCA Lease Area Boundary
CHAPTER ONE
100 GENERAL CONTENTS

112 IDENTIFICATION OF INTERESTS

112.100 Statement as to Type of Entity

The Applicant, Sunnyside Cogeneration Associates ("SCA"), is a Utah joint venture between Sunnyside Holdings I, Inc. and Colmac Utah, Inc. Information regarding these entities and other parent or controlling corporations is described in the sections that follow.

112.210 Information Regarding the Applicant

Additional information regarding the applicant may be obtained by contacting:

<table>
<thead>
<tr>
<th>Local</th>
<th>Plant Engineer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunnyside Cogeneration Associates</td>
<td>Attn: Rusty Netz</td>
</tr>
<tr>
<td>Attn: Plant Manager</td>
<td>One Power Plant Road</td>
</tr>
<tr>
<td>P.O. Box 159</td>
<td>P.O. Box 159</td>
</tr>
<tr>
<td>Sunnyside, Utah 84539</td>
<td>Sunnyside UT 84539</td>
</tr>
<tr>
<td>Phone: (435) 888-4476</td>
<td>Phone: (435) 888-4476</td>
</tr>
</tbody>
</table>

112.220 Information Regarding the Resident Agent:

Sunnyside Cogeneration Associates
Attn: Gerald Hascall, Plant Manager
P.O. Box 159, Sunnyside UT 84539 (mailing address)
One Power Plant Road, Sunnyside, UT 84539 (street address)
Phone: (435) 888-4476

112.230 Information Regarding Abandoned Mine Land Reclamation Fee:

On July 27, 1994 the Office of Surface Mining found that the waste material located within the SCA Permit Area has no value and is not subject to reclamation fees. Correspondence relating to this matter is included in Appendix 1-1. OSM-1 to be filed.
112.300-330 Information Regarding "Owners" and "Controllers":

The Applicant, SCA, is a Utah joint venture. SCA holds the contracts, property, and permits for the project in its name. Because the joint venture is essentially a partnership between Sunnyside Holdings I, Inc. and Colmac Utah, Inc., SCA has no corporate information of its own. Therefore, the information required under regulation 112.300-330 is provided for the joint venture partners, Sunnyside Holdings I, Inc. and Colmac Utah, Inc., and their parent or controlling corporation.

The information relevant to Colmac Utah, Inc. and Sunnyside Holdings I, Inc. traces to the parentage of Colmac Sunnyside, Inc. Figure 1-7 identifies the corporate organization chart and the corporate directors and officers of the parent companies to SCA. SCA contracts with several companies and individuals to provide services at the facility. The officers and directors of the entities identified in Figure 1-7 determine the manner in which SCA conducts coal mining and reclamation operations.

112.340-420 Further Information Regarding Owners and Controllers

Neither Colmac Utah, Inc., nor Sunnyside Holdings I, Inc., nor their owners or controllers, has owned or controlled a coal mining and reclamation operation in the United States within five years preceding the date of this application, nor do they have any interest in any pending coal mine operation permit applications, except for the following:

C/007/042 Star Point Waste Fuel, Wattis Utah.

112.500 Surface and Mineral Property

There are no legal or equitable owners of the surface or mineral property to be mined other than the Applicant. Additionally, there are no leasehold interests nor any purchasers of record under a real estate contract for the property to be mined except for the following:

Sunnyside Properties LLC., Utah limited liability company, holds fee title to a portion of SCA's permit property. SCA has a long term lease for this portion of the permit property.
112.600 Contiguous Property

The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area:

Headwaters Incorporated  
10653 South Riverfront Pkwy Ste 300  
South Jordan UT 84095

Historical Properties, Inc.  
207 Montgomery  
Suite 215  
Montgomery, AL 36104

East Carbon City  
East Main St.  
East Carbon, UT 84520

Covol Technologies, INC.  
11778 South Election Rd.  
Suite 210  
Draper, Utah 84020

Sunnyside Properties, L.L.C.  
One Power Plant Road  
PO Box 139  
Sunnyside, UT 84539

Levada EF Five, LLC  
c/o Adrian Zajac  
115 East 92nd St, Apt 9A  
New York, NY 10128

Sunnyside Cogeneration Associates  
PO Box 159  
Sunnyside UT 84539

SCA Sunnyside  
Permit # C/007/035  
100-3  
April 2017
112.700 MSHA Numbers

The MSHA numbers for all mine-associated structures that require MSHA approval:

<table>
<thead>
<tr>
<th>Structure</th>
<th>MSHA Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coarse Refuse Pile</td>
<td>1211-UT-09-02093-01</td>
</tr>
<tr>
<td>Excess Spoil Disposal Area #1</td>
<td>1211-UT-09-02093-04</td>
</tr>
<tr>
<td>Excess Spoil Disposal Area #2</td>
<td>1211-UT-09-02093-05</td>
</tr>
</tbody>
</table>

112.800 Applicants Interest in Contiguous Lands

Applicant holds a lease contiguous to the SCA Permit Area; The area covered by SCA's leasehold interest is shown as "Lease Area" on Plate 1-1. In addition, SCA leases land from the City of East Carbon to the west of the Permit Area.

SCA also owns property adjacent to the current permit area along the south, east and west sides.

SCA Sunnyside
Permit # C/007/035

100-4

April 2017
113 VIOLATION INFORMATION

113.100-250 Suspensions and Revocations

Neither the Applicant, nor any of its subsidiaries, affiliates, or persons controlled by or under common control with the Applicant 1) has had a federal or state mining permit suspended or revoked in the last five years, or 2) has forfeited a mining bond or similar security deposited in lieu of bond. Figure 1-4 includes documentation of recent OSM recommendations from the Applicant Violator System (AVS).

113.300 Violations and Unabated Cessation Orders

Sunnyside Cogeneration Associates received no notices of violation from the Utah Division of Oil, Gas and Mining (DOGM) within the five year period prior to the application for Permit Renewal. Information regarding these violations is described below:

There have been no unabated cessation orders or unabated air and water quality violation notices received by any coal mining and reclamation operation owned or controlled by either the Applicant or by any person who owns or controls the Applicant.

113.310 Violation Information

None

114 RIGHT-OF-ENTRY INFORMATION

114.100 Description of Legal Documents

Sunnyside Fuel Corporation (a predecessor-in-interest to SCA) obtained fee title to the SCA Permit Area (and thus the legal right to enter and begin activities) pursuant to a Deed, Assignment, and Bill of Sale between Kaiser Fuel Corporation (a predecessor-in-interest to the prior permittee Sunnyside Coal Company) as Grantor, and Sunnyside Fuel Corporation, as Grantee, dated December 28, 1987, recorded December 29, 1987 at Book 277 of Record, Pages 679-690 at Carbon County, Utah. Sunnyside Fuel Corporation transferred its rights under the Deed, Assignment and Bill of Sale to the Applicant on or about April 1, 1991. Applicant's right-of-entry is not the subject of any pending litigation. The legal description of the lands affected (i.e., the SCA Permit Area) is set forth above at R645-303-322.

114.200-230 Private Mineral Estate

These sections do not apply because the private mineral estate has not been asserted for the private surface estate.

INTEGRATED

SCA Sunnyside
Permit # C/007/035

100-5

April 2017
115 STATUS OF UNSUITABILITY CLAIMS

115.100 Unsuitable Areas

The SCA Permit Area is not within an area designated unsuitable for coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under R645-103-300, R645-103-400, or 30 CFR Part 769.

115.200 Exemptions

This section is not applicable because Applicant does not claim the exemption described in R645-103-333.

115.300 Public Roads

This section does not apply because Applicant does not propose to conduct coal mining and reclamation operations within three hundred feet of an occupied dwelling or within 100 feet of a public road.

116 PERMIT TERM

116.100 Start and Termination Dates

A waste disposal facility, which will comprise a portion of a coal mine waste fired electric power plant, is located adjacent to the SCA Permit Area and has been operational since 1993. Figure 1-6 includes documentation of recent permit term approvals. The refuse pile located in the SCA Permit Area is being reclaimed over an approximate 30-year period by burning it in the adjacent facility.

116.200-220 Term in Excess of Five Years

These sections do not apply because Applicant does not require an initial permit term in excess of five years in order to obtain necessary financing for equipment and the opening of the operation.

117 INSURANCE

117.100 Liability Insurance

A copy of the certificate of liability insurance is attached at Figure 1-1 hereto.
117.200 Proof of Publication

A newspaper advertisement, Figure 1-2, has been published in the "Sun Advocate", for four (4) weeks following the determination of completeness. Proof of publication of the newspaper advertisements is given in Figure 1-3.

117.300 Shared Facilities

This Section does not apply because there are no plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations.

118 APPLICATION FEE

The required filing fee of $5.00 was submitted with the original Permit Application.

123 VERIFICATION

The required verification statement is included in Figure 1-5.

130 REPORTING OF TECHNICAL DATA

SCA, in the preparation of this permit document, has compiled and relied on data and maps from previous permit applications and previously approved permits for the Sunnyside Coal Company's (SCC) mines. Information regarding preparers can be found in the SCC Permit document. Any additional studies, which SCA has performed, include preparers name, methods, and other information.

140 MAPS AND PLANS

Maps submitted herewith are presented in a consolidated format, to the extent possible, and include the types of information that are set forth on U.S. Geological Survey of the 1:24,000 scale series. The maps of adjacent areas will clearly show the lands and waters within those areas and are at the scale determined by DOGM. The maps and cross-sections associated with this Permit are listed in the General Table of Contents.

150 COMPLETENESS

This Permit Application contains the information required by R645-301; R645-302 is not applicable.
FIGURE 1-1
CERTIFICATE OF LIABILITY INSURANCE

INCORPORATED
FEB 04 2003
DIV OF OIL GAS & MINING
CertiFicate of liability insurance  

S-21-1  

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

Important: If the certificate holder is an additional insured, the policy(ies) must be endorsed. If subrogation is waived, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Producer  1-405-235-6633  
Gallagher Meyers-Reynolds  
A division of Arthur J. Gallagher Risk Mgt Services Inc  
1230 N. Robinson  
Oklahoma City, OK 73103  
Lee Reynolds  

Insured  
Sunnyside Cogeneration Assoc.  
c/o Exxon Corporation  
2301 Market Street - 8-21-1  
PO Box 8699  
Philadelphia, PA 19101-8699  

Certificate number: 28531898  

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

Date (MM/DD/YYYY)  08/01/2012  

Coverages  

Certificate holder  

Date of policy (MM/DD/YYYY)  08/01/2012  

General liability  

Each occurrence  $1,000,000  
Damage to rented premises (ea occurrence)  $1,000,000  
Medical expenses (any one person)  $10,000  
Personal and advertising injury  $1,000,000  
General aggregate  $2,000,000  
Products-commodity aggregate  $2,000,000  

A. automobile liability  

Combined single limit (ea accident)  $1,000,000  
Bodily injury (per person)  $ 
Bodily injury (per accident)  $ 
Property damage (per accident)  $ 

A. umbrella liability  

Each occurrence  $4,000,000  
Aggregate  $4,000,000  

A. ADDITIONAL INSURED  

E. pollution  

Aggregated  3,000,000  
Each pollutant condition 1,000,000  

Description of operations/locations/vehicles (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  

General liability blanket additional insured: Form No.: 42-02-0038 (Auto)  

Division oil, gas & mining  

INcorporated  

November 13, 2012  

Authorization representative  

© 1988-2010 ACORD CORPORATION. All rights reserved.
Meyers-Reynolds & Associates
1230 North Robinson
Oklahoma City, Ok 73103
405-235-6633/405-235-6634

SUNNYSIDE COGENERATION ASSOC.
C/O Constellation Energy Group
750 E. Pratt Street
Baltimore, MD 21202

This certificate is issued as a matter of information only and
confers no rights upon the certificate holder. This certificate
does not amend, extend or alter the coverage afforded by the
policies below.

COMPANIES AFFORDING COVERAGE

<table>
<thead>
<tr>
<th>COMPANY LETTER</th>
<th>COMPANY NAME</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>Liberty Mutual Fire Ins. Co.</td>
</tr>
<tr>
<td>B</td>
<td>Liberty Mutual Insurance Co.</td>
</tr>
<tr>
<td>C</td>
<td>St. Paul Surplus Lines</td>
</tr>
<tr>
<td>D</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td></td>
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</tbody>
</table>

COVERAGES

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period.

INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND LIMITATIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR. | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
---------|-------------------|---------------|----------------------------------|----------------------------------|-------|
A        | General Liability |              |                                  |                                  |       |
        | Commercial General Liability: | TE2-691-518993-322 | 08/01/02 | 08/01/03 | $2,000,000, $2,000,000, $1,000,000, $1,000,000, $100,000, $10,000 |
        | Owners & Contractors Property | | | | |
B        | Umbrella Form: Other than Umbrella Form | TH1-691-518993-112 | 08/01/02 | 08/01/03 | $15,000,000, $15,000,000, $1,000,000, $1,000,000, $100,000, $10,000 |
        | Workers' Compensation | | | | |
        | Employers' Liability | | | | |
C        | Excess Umbrella | QY05507091 | 08/01/02 | 08/01/03 | $10,000,000, $10,000,000, $10,000,000, $10,000,000, $10,000,000 |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED.

RE: PERMIT # ACT/007/035

CERTIFICATE HOLDER & CANCELLATION

DEPT. OF OIL, GAS & MINING (DOG&M)
ATTN: Pam Grubbaugh - Littig
P.O. Box 145801
Salt Lake City UT 84114-5801

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL SEND A WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT IN NO EVENT MORE THAN 30 DAYS AFTER CANCELLATION.

AUTHORIZED REPRESENTATIVE

[Signature]

TOTAL P. 01
FIGURE 1-2
FORM FOR ADVERTISEMENT OF APPLICATION FILING
AFFIDAVIT OF PUBLICATION

STATE OF UTAH

ss.

County of Carbon,)

I, Richard Shaw, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State of Utah a true copy of which is hereto attached, was published in the full issue of such newspaper for 4 (Four) consecutive issues, and on the Utahlegals.com website, the first publication was on the 18th day of September, 2012, and that the last publication of such notice was in the issue of such newspaper dated the 9th day of October 2012.

Richard Shaw – Publisher

Subscribed and sworn to before me this 9th day of October, 2012.

Notary commission expires January 10, 2015

Published in the Sun Advocate September 18, 25, October 2 and 9, 2012.
PUBLIC NOTICE

Notice is hereby given as required by the Utah Coal Mining Rules at R645-300-121 that Sunnyside Cogeneration Associates, P.O. Box 10, East Carbon, Utah, 84520, has filed an application for a five year renewal of coal mining Permit No. ACT/007/035. Approval of this application will allow Sunnyside Cogeneration Associates to continue to operate the Sunnyside Refuse and Slurry Coal Mine under the provisions of the Utah Coal Mining and Reclamation Act and the Utah R645 Coal Mining Rules.

The permit area is comprised of 323.95 acres of fee land and is located in Carbon County, Utah. The surface facilities area is located directly south of Sunnyside, Utah, just off Highway 123. The entire property is located within lands shown on USGS 7.5 minutes "Sunnyside" Quadrangle map and is described as follows:

Township 15 South, Range 14 East, SLBM
Section 6: Portions of S½ and SE¼ of NE¼
Section 7: Portions of N½

Copies of the permit renewal application will be available for inspection at the following locations: Utah Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, Salt Lake City, Utah 84114 and at the Carbon County Courthouse, Price, Utah.

Written comments, objections or requests for an informal conference regarding this application must be submitted within 30 days of the last publication date of this notice, to the Utah Division of Oil, Gas and Mining, Attn: Coal Regulatory Program, 1594 West North Temple, Suite 1210, Salt Lake City, Utah 84114-5801.

C:\SHERRY\REPORTS\SCA\SEPT997\NOTICE.WPD

INCORPORATED
FEB 04 2003
DIV OF OIL GAS & MINING
NOTICE OF APPLICATION FILING

Notice is hereby given that Sunnyside Cogeneration Associates, of

Sunnyside Cogeneration Associates
Attention: David Pearce
P.O. Box 58087
Salt Lake City, Utah 84158-0087

OR

Sunnyside Cogeneration Associates
c/o Environmental Power Corporation
200 State Street, 13th Floor
Boston, Massachusetts 02129

has submitted an application to the State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining, seeking a Permanent Program Permit (PRO/007/035) under the provisions of the Utah Coal Mining and Reclamation Act (Utah Code Ann. 40-10-1, et seq.) and the Utah Coal Mining Rule R645 to use the coarse refuse pile at the Sunnyside Mine.

The permit area is located in Carbon County, Utah as follows:

PARCEL B:

Describing a parcel of land located in Carbon County, Utah, which is located in the east half of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian and being more particularly described according to the following courses and distances, to wit:

Beginning at the East one quarter corner of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian and running thence S 0°13'39" W, 1818.48 feet along the east section line of Section 6 to the south right of way line of an existing railroad track; thence northwesterly along a curve to the right with a radius of 450.00 feet, through an angle of 83°37'47"; for a distance of 656.83 feet having a chord that bears N 40°27'18" W, 600.05 feet; thence N 1°21'36" E, 68.00 feet along the westerly right of way line of an existing railroad track; thence S 57°11'02" W, 338.86 feet to an existing 5/8 inch rebar; thence S 66°14'45" W, 220.17 feet to an existing 5/8 inch rebar; thence S 86°11'30" W, 261.34 feet to a metal fence post; thence N 4°41'13" W, 264.09 feet to a roof bolt on the west side of a gate in a fence line; thence N 10°54'48" W, 189.49 feet to a metal fence post; thence N 0°39'10" W, 254.39 feet to a metal fence post; thence N 10°09'48" W, 315.48 feet to a metal fence post; thence N 6°32'57" W, 232.70 feet to a roof bolt in an existing fence line; thence N 6°32'57" W, 65.24 feet to the south
right of way line of a Denver and Rio Grande Railroad as described in a certain deed dated July 29, 1912; thence N 71°27'00" E, 1209.07 feet along the south line of a 50 foot wide right of way for the Denver and Rio Grande Railroad; thence northeasterly along a curve to the left with a radius of 979.93 feet, through an angle of 9°19'48", for a distance of 159.57 feet, having a chord that bears N 66°47'06" E, 159.40 feet to the east line of said Section 6; thence S 0°13'39" W, 174.12 feet along the east line of Section 6, to the point of beginning.

Containing 42.316 acres more or less.

PARCEL C:

Describing a parcel of land located in Carbon County, Utah, which is located in the south half of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian, and being more particularly described according to the following courses and distances, to-wit:

Beginning at the southeast corner of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian which is a brass cap; and running thence N 89°57'59" W, 2646.97 feet along the south line of said Section 6 to the south one-quarter corner of said Section 6; thence S 89°27'59" W, 1321.87 feet along the south line of said Section 6 to the southwest corner of the SE1/4SW1/4 of said Section 5; thence N 59°40'32" E, 666.58 feet to a metal fence post; thence N 44°13'50" E, 430.53 feet to a roof bolt; thence N 59°09'24" E, 167.86 feet to a metal fence post; thence N 63°51'14" E, 188.19 feet to a metal fence post; thence N 60°15'43" E, 335.60 feet to a metal fence post; thence N 21°00'31" W, 34.15 feet to an east brace post in a barbed wire fence; thence N 81°18'59" E, 1270.98 feet along an existing fence line to a roof bolt; thence N 36°40'17" E, 152.88 feet along a fence line to a roof bolt; thence S4°41'13" E, 264.09 feet to a metal fence post; thence N 86°11'30" E, 261.34 feet to an existing 5/8 inch rebar; thence N 66°15'45" E, 220.17 feet to an existing rebar; thence N 57°11'01" E, 338.86 feet to the west right of way line of an existing railroad right of way; thence S 1°21'36" W, 68.00 feet along the westerly right of way line of an existing railroad track; thence southeasterly along a curve to the left with a radius of 450.00 feet, through an angle of 83°37'47", for a distance of 656.83 feet having a chord that bears S 40°27'18" E 600.05 feet to a point on the east line of said Section 6; thence S 0°13'39" W, 818.01 feet along the section line to the point of beginning.

Containing 79.085 acres, more or less.

ALSO:

Describing a parcel of land located in Carbon County, Utah, which is located in the
Beginning at the northwest corner of Section 7, Township 15 South, Range 14 East, Salt Lake Base and Meridian, which is a brass cap; and running thence N 89°27'59" E, 1253.27 feet along the north line of said Section 7 to the northeast corner of the NW1/4NW1/4 of said Section 7; thence N 89°27'59" E, 1321.87 feet along the north line of said Section 7 to the northeast corner of said Section 7 to the northeast corner of said Section 7 which is a brass cap; thence S 0°15'54" W, 1322.37 feet along the east line of said Section 7 to the southeast corner of the NE1/4NE1/4 of said Section 7; thence S 89°53'03" W, 2656.98 feet along the south line of the north one half of the northeast one quarter of said Section 7 to the southwest corner of the NW1/4SW1/4 of said Section 7; thence N 0°17'17" E, 1984.79 feet along the west section line of said Section 7 to the point of beginning.

Beginning at a point on the north boundary line of said Section 7, which point is Station 102+50.0 P.O.C. of the Railroad Center Line Survey, said point being N 89°27'59", 633.0 feet, more or less, along the north line of said Section 7, said point being on a curve to the right with a radius of 572.96 feet through an angle of 114°43' for a distance of 1147.2 feet and having chord bearing of S 1°24'18" E and a distance of 443.97 feet, the tangent to curve at this point bearing S 24°12' E; thence continuing on the same curve right 455.9 feet in a southerly direction to Station 107+05.9 P.T.; thence S 21°21' W, 245.5 feet to Station 109+51.4 P.C., which point is the beginning of a curve to the left with a radius of 716.20 feet through an angle of 28°20' for a distance of 354.2 feet and having a chord bearing of S 7°13' W and a distance of 350.57 feet to Station 113+05.6 P.T.; thence S 6°57' E, 973.89 feet to Station 122+79.49, said point begin on the south line of the north one half of the south one half of the northwest one quarter of said Section 7.
Containing 9.318 acres, more or less.

**Written Comments:** A copy of the Permit Application can be found at the Carbon County Recorder's office or the offices of the Division of Oil, Gas and Mining (address below). Pursuant to R645-300-122, any person having an interest which is or may be adversely affected by a decision for this permit, including an official of any federal, state, or local government agency, may submit written comments on the Application to the Division, within 30 days of the date of this advertisement, at the following address:

DIVISION OF OIL, GAS AND MINING  
Attn: Dianne R. Nielson, Director  
355 West North Temple  
3 Triad Center, Suite 350  
Salt Lake City, Utah 84180-1203
FIGURE 1-3
PROOF OF PUBLICATION OF NEWSPAPER ADVERTISEMENTS
STATE OF UTAH) ss.
County of Carbon,

I, Kevin Ashby, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State and County aforesaid, and that a certain notice, a true copy of which is hereto attached, was published in the full issue of such newspaper for 5 (Five) consecutive issues, and that the first publication was on the 25th day of November, 1997 and that the last publication of such notice was in the issue of such newspaper dated the 23rd day of December, 1997.

Kevin Ashby - Publisher

Subscribed and sworn to before me this 23rd day of December, 1997.

Linda Thayn - Notary Public

Notary Public My commission expires January 10, 1999 Residing at Price, Utah

Publication fee, $261.90
AFFIDAVIT OF PUBLICATION

AS NEWSPAPER AGENCY CORPORATION LEGAL BOOKKEEPER, I CERTIFY THAT THE ATTACHED ADVERTISEMENT OF NOTICE OF APPLICATION FILING NOTICE IS HEREBY FOR ALANE BOYD; ECKHOFF, WAT WAS PUBLISHED BY THE NEWSPAPER AGENCY CORPORATION, AGENT FOR THE SALT LAKE TRIBUNE AND DESERET NEWS, DAILY NEWSPAPERS PRINTED IN THE ENGLISH LANGUAGE WITH GENERAL CIRCULATION IN UTAH, AND PUBLISHED IN SALT LAKE CITY, SALT LAKE COUNTY IN THE STATE OF UTAH.

PUBLISHED ON OCT 31 Nov 07 Thru Dec 2

SIGNATURE
11/21/92

DATE
AFFIDAVIT OF PUBLICATION

STATE OF UTAH) ss.
County of Carbon,

INCORPORATED

FEB 02 2003

D I V 0 F O I L G A S & M I N I N G

I, Dan Stockburger, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State and County aforesaid, and that a certain notice, a true copy of which is hereto attached, was published in the full issue of such newspaper for Four (4) consecutive issues, and that the first publication was on the 29th day of October, 1992, and that the last publication of such notice was in the issue dated November 19, 1992.

Subscribed and sworn to before me this 19th day of November, 1992.


Residing at Price, Utah

Publication fee, $435.20

STATE OF UTAH)
County of Carbon,

DIV OF OIL GAS & MINING

I, Dan Stockburger, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State and County aforesaid, and that a certain notice, a true copy of which is hereto attached, was published in the full issue of such newspaper for Four (4) consecutive issues, and that the first publication was on the 29th day of October, 1992, and that the last publication of such notice was in the issue dated November 19, 1992.

Subscribed and sworn to before me this 19th day of November, 1992.


Residing at Price, Utah

Publication fee, $435.20

STATE OF UTAH)
County of Carbon,

DIV OF OIL GAS & MINING

I, Dan Stockburger, on oath, say that I am the Publisher of the Sun Advocate, a twice-weekly newspaper of general circulation, published at Price, State and County aforesaid, and that a certain notice, a true copy of which is hereto attached, was published in the full issue of such newspaper for Four (4) consecutive issues, and that the first publication was on the 29th day of October, 1992, and that the last publication of such notice was in the issue dated November 19, 1992.

Subscribed and sworn to before me this 19th day of November, 1992.


Residing at Price, Utah

Publication fee, $435.20
FIGURE 1-4

AVS RECOMMENDATIONS
February 2, 1998

To: File
From: Pamela Grubaugh-Littig, Permit Supervisor
Re: 510 (c) Recommendation for Permit Renewal, Sunnyside Refuse and Slurry, Sunnyside Cogeneration Associates, ACT/007/035, Folder #5, Carbon County, Utah

As of this writing of this memo, there are no NOVs or COs which are not corrected or in the process of being corrected for the Sunnyside Refuse and Slurry Mine. There are no finalized civil penalties which are outstanding and overdue in the name of Sunnyside Cogeneration Associates. Sunnyside Cogeneration Associates does not have a demonstrated pattern of willful violations, nor have they been subject to any bond forfeitures for any operation in the state of Utah.

Attached is an OSM recommendation from the Applicant Violator System with a "conditional issue" recommendation for the Sunnyside Refuse and Slurry Mine for this permit renewal. This "conditional issue" is the result of the connection of the operator for this permit being Savage Industries. Savage Industries is currently in a Settlement Agreement with the State of Kentucky for violations at the Catawba Mine, see attached.
Applicant Evaluation  Applicant Violator System  02-Feb-1998 08:27:45

State : UT  Permit No : ACT007035  Appl No : ACT007035
Applicant : 128991(SUNNYSIDE COGENERATION ASSOCIATES)  Seqno : 2

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PRV_SCR(F3) VIOL(F4) EVOFT(F5) VOFT(F6) CHOICES(F10)

INCORPORATED
FEB 04 2003
DIV OF OIL GAS & MINING
State: UT Permit No: ACT007035
Permittee: 128991 (SUNNYSIDE COGENERATION ASSOCIATES)
Appl No: ACT007035
Applicant: 128991 (SUNNYSIDE COGENERATION ASSOCIATES)

SYSTEM: C (COND ISSUE) Date: 02-Feb-1998 Mode: VIEW
Reason: 0 AML, 0 AUD, 0 CMIS, 1 FORF, 6 STATE, 0 NRSP VIOLATION(S)

OSMRE: 0 (OTHER) Date: 02-Feb-1998 Mode: UPDATE
Reason: See SAM #29. Viol. Status: The Catawba viols. are covered by the KY Settlement Agreement, the link is Theodore H Black who is a Dir of a b6 controller of the applicant. The Savage Ind. viol. is coded C. Savage Ind. owns Savage Bros. who owns Savage Coal Serv. Corp. who is an oper. for the applicant. (KH)

SRA: Date: Mode: VIEW
Reason:

SAVE(F5) DELETE(F8)
PRV_SCR(F3) QUIT(F4) CHOICES(F10)
FIGURE 1-5
NOTARIZED SIGNATURE

INCORPORATED
FEB 04 2003
DIV OF OIL GAS & MINING
APPLICATION FOR APPROVAL OF TRANSFER, ASSIGNMENT OR SALE OF PERMIT RIGHTS
(Partial Assignment of ACT/007/007)

SUNNYSIDE COGENERATION ASSOCIATES
August 1992

This is an application under R645-303-300 for approval of the transfer of a portion of Permit No. ACT/007/007 that pertains to the refuse pile (including slurry ponds) associated with the Sunnyside Mine located in Carbon County, Utah, from Sunnyside Coal Company (SCC), the existing permittee, to Sunnyside Cogeneration Associates (SCA).

SCA plans to use the coal mine waste as a fuel source for SCA's cogeneration facility presently being constructed on land adjacent to the refuse pile (Permit ACT/007/007 was earlier amended to remove from the permitted area the land upon which SCA's facility is being constructed). As of the date of this Application, the existing permit does not contemplate such use of the coal mine waste. Earlier this year, SCC submitted an APPLICATION FOR PERMIT AMENDMENT dated May 15, 1992, in which SCC requested that Permit ACT/007/007 be amended to allow for the contemplated alternative disposal of the coal mine waste. This application for approval of the transfer of a portion of Permit ACT/007/007 (Transfer Application) presumes approval of SCA's contemplated use of the coal mine waste as set forth in SCC's application for permit amendment.

APPLICATION REQUIREMENTS OF R645-303-300
303-321 APPLICATION INFORMATION

321.100 Name, Address and Permit Number of Existing Permittee

Operations
Sunnyside Coal Company
P.O Box 99
Sunnyside, Utah 84539
Telephone: (801) 888-4421

Corporate Offices of the Existing Permittee
Sunnyside Coal Company
The Registry
1133 Spruce Street
Boulder, Colorado 80302
Telephone: (303) 938-1506

Permit Number: ACT/007/007
321.200 Brief Description of the Proposed Action

The portion of Permit No. ACT/007/007 that pertains to a particular piece of land (consisting of approximately 310 acres and referred to herein as the "SCA Permit Area") needs to be transferred from SCC (the existing permittee) to SCA. The SCA Permit Area was purchased by SCA from Kaiser Coal Company (the prior owner of the Sunnyside mines) for the purpose of using the coal mine waste located on the SCA Permit Area as a fuel source for SCA’s cogeneration facility located adjacent to the SCA Permit Area. SCC purchased the Sunnyside mine from Kaiser Coal Company and has subsequently utilized the SCA Permit Area to deposit its coal mine waste and other refuse materials.

321.300 Legal, Financial, Compliance and Related Information

The legal, financial, compliance and related information required by R645-301-100 through R645-301-800 is set forth in Chapters 1 through 8 attached hereto.

303-322 Advertisement of the Filing of the Application

Advertisement of the filing of this Application will be submitted to the Newspaper Agency Corporation in Salt Lake City, Utah and the Sun Advocate in Price, Utah in substantially the form (proof of publication will be submitted to the Division of Oil Gas and Mining (DOGM) upon publication) set forth in Figure 1-2.

303-323 Performance Bond Coverage

The information regarding the appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under R645-301-800, is set forth in Chapter 8 attached hereto.

303-340 Criteria for Approval

Applicant hereby requests that DOGM allow the requested transfer of a portion of ACT/007/007 and that it make the written findings set forth in R645-303-341 through R645-303-343 regarding SCA’s eligibility to receive a permit, regarding its performance bond and regarding any other requirements specified by DOGM.

303-360 Continued Operation Under Existing Permit

Upon DOGM’s final approval of this Application, SCA will assume the liability and reclamation responsibilities associated with the SCA Permit Area and commits to conducting the operations in full compliance with the State Program.
This application is submitted on behalf of Sunnyside Cogeneration Associates as of this 17th day of August, 1992, by Joseph E. Cresci, the President of Kaiser Systems, Inc. and Kaiser Power of Sunnyside, Inc. which corporations comprise the joint venture of Sunnyside Cogeneration Associates.

STATEMENT OF VERIFICATION

STATE OF UT

COUNTY OF Salt Lake

Joseph E. Cresci, having been first duly sworn, states as follows:

1. That he is the person who executed the foregoing Application and all exhibits thereto as President of the joint venture corporations which comprise Sunnyside Cogeneration Associates.

2. That the matters stated therein are true to the best of his information and belief.

DATED this 17th of August, 1992.

SUNNYSIDE COGENERATION ASSOCIATES

KAISER SYSTEMS, INC.                                KAISER POWER OF SUNNYSIDE, INC.

by: Joseph E. Cresci
President

by: Joseph E. Cresci
President

STATE OF UT

COUNTY OF Salt Lake

On the ___ day of August, 1992, personally appeared before me Joseph E. Cresci, who being by me duly sworn did say, for himself, that he, the said Joseph E. Cresci is the President of said joint venture participants and that by authority of a resolution of the boards of directors of the two joint venture participants, Kaiser Power of Sunnyside, Inc. and Kaiser Systems, Inc., said Joseph E. Cresci duly acknowledged to me that said corporations executed the same.

Margaret McDermott
Notary Public
Residing in: Salt Lake City, Utah

My Commission Expires: June 20, 1994

INCORPORATED

FEB 04 2003

DIV OF OIL GAS & MINING
FIGURE 1-6
PERMIT RENEWAL CORRESPONDENCE
February 4, 1998

Harold Sallas, General Manager
Sunnyside Cogeneration Associates
1 Power Plant Road
Sunnyside, Utah 84539

Re: Five-Year Permit Renewal, Sunnyside Cogeneration Associates, Sunnyside Refuse and Slurry, ACT/007/035, Folder #3, Carbon County, Utah

Dear Mr. Sallas:

Enclosed are two (2) copies of the renewed permanent program mining and reclamation permit for the Sunnyside Refuse and Slurry Operation. The bond amount of $1,900,000 is currently posted for reclamation. Please be advised that the bond amount has been reviewed and revised to $1,074,000 which may be adjusted at anytime.

Please read the permit to be sure you understand its requirements and then have both copies signed and return one to the Division. If you have any questions, please call me.

Very truly yours,

Lowell P. Braxton
Acting Director
UTAH DIVISION OF OIL, GAS AND MINING
STATE DECISION DOCUMENT
For
PERMIT RENEWAL

Sunnyside Cogeneration Associates
Sunnyside Refuse and Slurry
ACT/007/035
Carbon County, Utah

February 4, 1998

CONTENTS

* Administrative Overview
* Location Map
* Permitting Chronology
* Findings
* Permit
* Technical Analysis
* Affidavit of Publication
* AVS Recommendation, memo dated February 2, 1998
BACKGROUND

Information was provided by Sunnyside Cogeneration Associates (SCA), dated October 7, 1997 for incorporation into the mining and reclamation plan. This information was submitted by SCA in preparation for Permit Renewal.

Updated information found in the submittal by SCA includes updated text for all sections of the operation and reclamation plan. Most of the changes to the text of the plan were made in context with permit renewal where the plan previously discussed application for a new permit. Other changes in the text dealt with changes in the tense to clarify proposed verses, completed activities, and objectives within the plan. Maps and drawings in the plan were updated to reflect existing conditions through recent aerial photography and mapping which was done by SCA in 1997.

One significant change in the plan involves the addition of a second excess spoil disposal area. This feature allows for an additional permanent refuse disposal area and is discussed in the Technical Analysis where applicable. The incorporation of Excess Spoil Disposal Area #2 is within the currently disturbed area and is considered an amendment to the permit.

Bonding and cost information regarding reclamation of the facility has been re-evaluated, based on worse case conditions over the permit term, rather than life-of-mine conditions.

ANALYSIS

The permittee has met the requirements for permit renewal. The notice of permit renewal was published in the Sun Advocate on November 25, December 2, 9, and 23, 1997. Comments were received from the Division of Wildlife Resources and the United States Fish and Wildlife Service. These comments were not substantive to deny permit renewal but were forwarded to the permittee on January 26, 1998 to review and amend the mining and reclamation plan accordingly within 60 days.
RECOMMENDATION

Requirements for permit renewal have been met. Approval for this permit renewal is recommended.
Eckhoff, Watson, and Preator Engineering

SUNNYSIDE COGENERATION

SUNNYSIDE, UTAH

DIV OF OIL GAS & MINING
PERMITTING CHRONOLOGY

Sunnyside Cogeneration Associates
Sunnyside Refuse and Slurry
Permit Renewal
ACT/007/035
Carbon County, Utah

February 4, 1998

October 7, 1997
Sunnyside Cogeneration Associates submitted a permit renewal application.

November 18, 1997
Determination of Administrative Completeness of permit renewal application. Permit renewal completeness determination sent to applicable state, federal, and county agencies.

November 25, December 2, 9, 16 and 23, 1997
Public notice of this permit renewal is published in the Sun Advocate.

January 16, 1998
Comments from the Utah Division of Wildlife Resources received about the Sunnyside Cogeneration Associates mining and reclamation plan.

January 22, 1998
Comments received from the United States Fish and Wildlife Service about the Sunnyside Cogeneration Associates mining and reclamation plan.

January 26, 1998
These two agency comment letters are forwarded to Sunnyside Cogeneration Associates, which is now required to amend the mining and reclamation plan accordingly within 60 days.

February 4, 1998
Permit renewed.
PERMIT RENEWAL FINDINGS

Sunnyside Cogeneration Associates
Sunnyside Refuse and Slurry
ACT/007/035
Carbon County, Utah

February 4, 1998

1. The permit renewal term will not exceed the original permit term of five years (R645-303-234).

2. The terms and conditions of the existing permit are being met (R645-303-233.110).

3. The present surface coal mining activities and reclamation operations are in compliance with the environmental protection standards of the Act and the Utah State Program (R645-303-233.120).

4. The requested renewal will not substantially jeopardize the operator’s continuing ability to comply with the Act and the Utah State Program (R645-303-233.130).

5. The operator has provided evidence of having liability insurance (Federal Insurance Company - 3710-68-78) (R645-303-233.140).

6. The operator has posted a reclamation surety in the required amount and has provided evidence that the surety will remain in full effect (Surety in the amount of $1,900,000 posted by Frontier Insurance Company #35790) (R645-303-233.150).

7. The operator has submitted all updated information as required by the Division at this time (R645-233.160).

Dave R. Haddock
Permit Supervisor

Amelia S. HD - Sitting
Permit Supervisor

Larry J. M. W. 3/4/08
Associate Director of Mining

Director
This permit, ACT/007/035, is issued for the state of Utah by the Utah Division of Oil, Gas and Mining (DOGM) to:

Sunnyside Cogeneration Association  
1 Power Plant Road  
Sunnyside, Utah 84539  
(435) 888-4476

for the Sunnyside Refuse/Slurry. Sunnyside Cogeneration Associates is the lessee of federal, state and fee-owned property. A performance bond is filed with the DOGM in the amount of $1,900,000.00, payable to the state of Utah, Division of Oil, Gas and Mining. DOGM must receive a copy of this permit signed and dated by the permittee.

Sec. 1 STATUTES AND REGULATIONS - This permit is issued pursuant to the Utah Coal Mining and Reclamation Act of 1979, Utah Code Annotated (UCA) 40-10-1 et seq, hereafter referred to as the Act.

Sec. 2 PERMIT AREA - The permittee is authorized to conduct surface coal mining and reclamation activities on 323.95 acres of fee land on the following described lands within the permit area at the Sunnyside Refuse/Slurry situated in the state of Utah, Carbon County, and located:

Township 15 South, Range 14 East, SLBM  
Section 6: Portions of S1/2 and SE1/4 of NE1/4, and  
Section 7: Portions of N1/2.

This legal description is for the permit area of the Sunnyside Refuse/Slurry included in the mining and reclamation plan. The permittee is authorized to conduct underground coal mining and reclamation activities on the foregoing described property subject to the conditions of the leases, including all conditions and all other applicable conditions, laws and regulations.
Sec. 3 COMPLIANCE - The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

Sec. 4 PERMIT TERM - This permit becomes effective on February 4, 1998 and expires on February 4, 2002.

Sec. 5 ASSIGNMENT OF PERMIT RIGHTS - The permit rights may not be transferred, assigned or sold without the approval of the Director, DOGM. Transfer, assignment or sale of permit rights must be done in accordance with applicable regulations, including but not limited to 30 CFR 740.13(e) and R645-303.

Sec. 6 RIGHT OF ENTRY - The permittee shall allow the authorized representative of the DOGM, including but not limited to inspectors, and representatives of OSMRE, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay to:

A. have the rights of entry provided for in 30 CFR 840.12, R645-400-110, 30 CFR 842.13 and R645-400-220; and,

B. be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and 30 CFR 842, when the inspection is in response to an alleged violation reported by the private person.

Sec. 7 SCOPE OF OPERATIONS - The permittee shall conduct underground coal mining activities only on those lands specifically designated as within the permit area on the maps submitted in the mining and reclamation plan and permit application and approved for the term of the permit and which are subject to the performance bond.

Sec. 8 ENVIRONMENTAL IMPACTS - The permittee shall minimize any adverse impact to the environment or public health and safety through but not limited to:

A. accelerated monitoring to determine the nature and extent of noncompliance and the results of the noncompliance;

B. immediate implementation of measures necessary to comply; and

C. warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the
Sec. 9 DISPOSAL OF POLLUTANTS - The permittee shall dispose of solids, sludge, filter backwash or pollutants in the course of treatment or control of waters or emissions to the air in the manner required by the approved Utah State Program and the Federal Lands Program which prevents violation of any applicable state or federal law.

Sec. 10 CONDUCT OF OPERATIONS - The permittee shall conduct its operations:

A. in accordance with the terms of the permit to prevent significant, imminent environmental harm to the health and safety of the public; and

B. utilizing methods specified as conditions of the permit by DOGM in approving alternative methods of compliance with the performance standards of the Act, the approved Utah State Program and the Federal Lands Program.

Sec. 11 EXISTING STRUCTURES - As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

Sec. 12 RECLAMATION FEE PAYMENT - The permittee shall pay all reclamation fees required by 30 CFR part 870 for coal produced under the permit, for sale, transfer or use.

Sec. 13 AUTHORIZED AGENT - The permittee shall provide the names, addresses and telephone numbers of persons responsible for operations under the permit to whom notices and orders are to be delivered.

Sec. 14 COMPLIANCE WITH OTHER LAWS - The permittee shall comply with the provisions of the Water Pollution Control Act (33 USC 1151 et seq,) and the Clean Air Act (42 USC 7401 et seq), UCA 26-11-1 et seq, and UCA 26-13-1 et seq.

Sec. 15 PERMIT RENEWAL - Upon expiration, this permit may be renewed for areas within the boundaries of the existing permit in accordance with the Act, the approved Utah State Program and the Federal Lands Program.

Sec. 16 CULTURAL RESOURCES - If during the course of mining operations, previously unidentified cultural resources are discovered, the permittee shall ensure that the site(s) is not disturbed and shall notify DOGM. DOGM, after coordination with
OSMRE, shall inform the permittee of necessary actions required. The permittee shall implement the mitigation measures required by DOGM within the time frame specified by DOGM.

Sec. 17 APPEALS - The permittee shall have the right to appeal as provided for under R645-300.

The above conditions (Secs. 1-17) are also imposed upon the permittee's agents and employees. The failure or refusal of any of these persons to comply with these conditions shall be deemed a failure of the permittee to comply with the terms of this permit and the lease. The permittee shall require his agents, contractors and subcontractors involved in activities concerning this permit to include these conditions in the contracts between and among them. These conditions may be revised or amended, in writing, by the mutual consent of DOGM and the permittee at any time to adjust to changed conditions or to correct an oversight. DOGM may amend these conditions at any time without the consent of the permittee in order to make them consistent with any new federal or state statutes and any new regulations.

THE STATE OF UTAH

By: [Signature]

Date: 2/5/98

I certify that I have read, understand and accept the requirements of this permit and any special conditions attached.

______________________________
Authorized Representative of the Permittee

Date: _____________________________
Sunnyside Cogeneration Associates
Figure 1-7
Information Regarding “Owners” and “Controllers”
Sunnyside Cogeneration Associates
Figure 1-7
Information Regarding "Owners" and "Controllers"
Permit No. C/007/035
Sunnyside Refuse/Slurry

Colmac Utah, Inc.
EIN 81-4134957

Colmac Sunnyside, Inc.
EIN 51-0392048

Sunnyside Holdings I, Inc.
EIN 41-1805522

Joint Venture Partner

Sunnyside Cogeneration Associates
EIN 52-2318424

Joint Venture Partner

INTEGRATED
MAY 14 2020
Div. of Oil, Gas & Mining
Colmac Utah, Inc.:  

The following Directors and Officers were appointed to the positions set forth below.

Directors:  
- Robert S. McLeese, Director, October 3, 2016  
- Chris L. Thompson, Director, October 3, 2016  
- Bret Leifson, Director, October 19, 2020

Officers:  
- Bret Leifson, President, Secretary, October 19, 2020  
- Robert S. McLeese, Chairman, Treasurer, October 3, 2016

The address for the officers and directors is 1105 North Market Street, Suite 650, Wilmington, DE 19801. Chris L. Thompson was President and Secretary of Colmac Utah, Inc. from October 3, 2016 to July 24, 2019. David E Krueger was President and Secretary from July 24, 2019 to October 19, 2020.

Colmac Sunnyside, Inc.:  

The following Directors and Officers were appointed to the positions set forth below.

Directors:  
- Robert S. McLeese, Director, August 23, 2010  
- Chris L. Thompson, Director, August 23, 2010  
- William K. Langan, Director, June 29, 2007

Officers:  
- Robert S. McLeese, Chairman, Chief Executive Officer, Chief Financial Officer, January 18, 2011, August 23, 2010  
- Bret Leifson, President, October 19, 2020  
- Joseph C. Lane, Secretary, July 13, 2011  
- William K. Langan, Assistant Secretary, June 28, 2007  

The address for the officers and directors is 1105 North Market Street, Suite 650, Wilmington, DE 19801. Chris L. Thompson was President of Colmac Sunnyside, Inc. from July 15, 2009 to July 24, 2019. David E Krueger was President from July 24, 2019 to October 19, 2020.
Sunnyside Holdings I, Inc.:

The following Directors and Officers were appointed to the positions set forth below.

Directors: Robert S. McLeese Director January 18, 2011
Chris L. Thompson Director July 15, 2009
Joseph C. Lane Director October 19, 2020

Officers: Robert S. McLeese Chairman January 18, 2011
Chief Executive Officer
Chief Financial Officer

Bret Leifson President October 19, 2020
Secretary October 19, 2020

Joseph C. Lane Vice President August 25, 2014


The address for the officers and directors is 1105 North Market Street, Suite 650, Wilmington, DE 19801. Chris L. Thompson was President Sunnyside Holdings I, Inc. from July 15, 2009 to July 24, 2019. Joseph C. Lane was Secretary from July 14, 2011 to July 22, 2019. David E Krueger was President and Secretary from July 22, 2019 to October 19, 2020.

Sunnyside Cogeneration Associates:

Sunnyside Cogeneration Associates (“SCA”) is a joint venture comprised of Sunnyside Holdings I, Inc. and Colmac Utah, Inc. and has no corporate information of its own.

SCA’s address is One Power Plant Road, P.O. Box 159, Sunnyside, UT 84539
Telephone Number: 435-888-4476.

SCA’s Registered Agent is Brian W. Burnett, Esq., Kirton McConkie,
50 East South Temple, Suite 400, Salt Lake City, UT 84111, Telephone Number: 801-239-3185.
APPENDIX 1-1

AML FEE REQUIREMENT CORRESPONDENCE
Dear Mr. Burnett:

This is in response to the correspondence and other data you submitted regarding the applicability of reclamation fees to the coal waste material generated from the Sunnyside Mine wash plant, and burned in the waste-coal fired small power production facility operated by Sunnyside Cogeneration Associates (SCA).

According to the information you have provided, it is our understanding that:

1. the material was or is the by-product of the coal preparation process, and has been found by the Federal Energy Regulatory Commission (FERC) to have little or no commercial value;

2. FERC has certified the SCA operation as a waste burning facility and that certification remains valid;

3. the material is not processed to remove the residual coal from the aggregate waste material; and

4. the material from the Sunnyside wash plant, which will be burned in the SCA facility, has no market value.

Based on this and related information, we find that the waste material in question has no value and will not be subject to reclamation fees. We must emphasize, however, that this information is subject to review by our staff, and that you must notify us immediately if any of the conditions you cited or representations you made should change. In addition, this finding does not release or in any way circumscribe SCA’s or related parties’ responsibilities under Title V of the Surface Mining Control and Reclamation Act, and as specified in the permit issued by the Utah Department of Natural Resources.
Because SCA’s refuse pile operation is permitted, it will still be necessary to report the tonnage used from the pile on the Coal Reclamation Fee Report (Form OSM-1) that is mailed to operators each calendar quarter. Should you have any questions on these matters, please contact Jane Gray (606-233-2808) or James Krawchyk (412-921-2676) of our audit staff.

Sincerely,

Robert Iwning, Assistant Director
Finance and Accounting
April 13, 1994

Dear Joe:

The deadline for abatement of State Violation N93-26-4-1 relating to AML fees is today. As we discussed, you and I have talked to John Sender from the Office of Surface Mining and that office is still considering SCA’s request for exemption from AML fees. Because we are waiting for that determination, SCA requests that the deadline for compliance for the above referenced violation be extended 60 days.

Thank you for your cooperation in this regard. If you have any questions, please contact me.

Very truly yours,

CALLISTER, DUNCAN & NEBEKER

Brian W. Burnett

cc: David Pearce
     Alane Boyd

Joseph Helfrich
Utah Coal Regulatory Program
Division of Oil, Gas and Mining
State of Utah
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: State Violation #N93-26-4-1
Sunnyside Cogeneration Associates ("SCA"), Permit No.
ACT/007/035, Carbon County, Utah

VIA FACSIMILE
Callister, Duncan & Nebeker
A Professional Corporation
Attorneys at Law
Suite 800 Kennecott Building
Salt Lake City, Utah 84133
Telephone 801-530-7300
Fax 801-364-9127
February 24, 1994

RECEIVED
FEB 25 1994
ECKHOFF, WATSON & PREATOR
ENGINEERING
INCORPORATED
FEB 04 2003
DIV OF OIL GAS & MINING

VIA FEDERAL EXPRESS

John Sender
Office of Surface Mining
1300 New Circle Road N.E.
Suite 102
Lexington, Kentucky 40505

Re: Sunnyside Cogeneration Associates ("SCA") - Request for Exemption from Abandoned Mine Land ("AML") Reclamation Fees

Dear Mr. Sender:

Pursuant to our telephone conversation, enclosed please find the following documents:


As we discussed, the Office of Surface Mining ("OSM") would like to review some additional historical information regarding SCA's refuse pile located in Sunnyside, Utah ("Refuse Pile") which is the focus of the request that the SCA be exempt from paying AML fees.

The Sunnyside Mine has been in operation since the early 1900's. Approximately fifty years ago, a wash plant was added to the Sunnyside
Mine. Coal mine waste from the wash plant has been deposited on the Refuse Pile since that time.

In discussions with the local people, many of them informed us that various discussions had taken place over the years about utilizing the Refuse Pile. Many of the local residents never thought anything productive would happen with the Refuse Pile and that it would remain there as a source of problems.

Subsequent to the passage of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), Kaiser Coal, who owned the Sunnyside Mine and the Refuse Pile, began to investigate the possibility of consuming the Refuse Pile as an alternative to disposal by utilizing it in an electric power generation facility. PURPA requires that a power generating facility be a qualifying facility ("QF"), before it can sell power to a local public utility at that utility’s avoided cost.

In the early 1980’s, the Public Service Commission of Utah ("PSC") began the process of evaluating the appropriate avoided cost that Utah Power & Light ("UP&L") should pay to any QFs in its territory. Kaiser Coal participated in these hearings through a subsidiary Kaiser Power. Eventually, an avoided cost amount was established. In 1985, Kaiser Power approached UP&L and requested that Kaiser Power through its subsidiaries Kaiser Systems, Inc. and Kaiser Power of Sunnyside, Inc. in a joint venture called SCA be allowed to sign a contract at the avoided cost price for a project. In January, 1987, after lengthy legal proceedings and hearings, SCA signed a Power Purchase Agreement with UP&L that would allow the use of the Refuse Pile in a QF electric generating facility.

After the Power Purchase Agreement was signed in 1987, Kaiser Steel Corporation, the parent company of Kaiser Coal, took out bankruptcy. In the bankruptcy process, subsidiaries and assets of subsidiaries were sold off and liquidated. At this point in time, Environmental Power Corporation ("EPC") became interested in purchasing the SCA project. The real value to the project was the signed Power Purchase Agreement with UP&L and several million dollar of grandfathered investment tax credits specifically associated with the SCA project. At the time, the project also had certain environmental permits and authorizations.

In December 1987, the Bankruptcy Court approved the sale of the SCA project to EPC including the Power Purchase Agreement, permits and fee title to the land and the coal mine waste associated with the Refuse Pile. In 1987, the Bankruptcy Trustee offered EPC other coal mine waste piles in the area, associated with the Kaiser bankruptcy, at no cost. EPC declined to take any additional piles, viewing these as
environmental liabilities as opposed to assets. The Bankruptcy Trustee sold the SCA project which included the Power Purchase Agreement, etc. as a combined package.

After EPC purchased the SCA project, an unrelated entity purchased the Sunnyside Mine and is operating it today.

After purchasing the rights to the SCA project in December, 1987, EPC made several attempts to finance the construction of the project. Finally in April, 1991, $109,500,000.00 worth of bonds were issued to finance the construction of the power plant. Equity participation was also obtained. These bonds were Solid Waste Disposal Refunding Bonds which qualified under federal tax law because SCA is eliminating the Refuse Pile which is a waste.

The Federal Energy Regulatory Commission ("FERC") found that the coal refuse met FERC's two part test for a "waste" material and recertified SCA as a small power production facility utilizing a waste material.

Construction on the SCA project began in the summer of 1991 and the plant began to produce electricity in 1993. The SCA plant is still undergoing some adjustments and final fine tuning. At full production, it is anticipated that the SCA project will utilize approximately 400,000 tons of coal mine waste on an annual basis.

At the 1991 closing, the Refuse Pile was transferred into the SCA name.

You will note in the Purchase and Sell Agreement that EPC paid approximately $1,000,000.00 at 1987 closing, in addition to assuming some liabilities. As I discussed earlier, the real value to the project was the Power Purchase Agreement with UP&L, which had been signed after a great deal of expense. The cost to begin the process of negotiating a power purchase agreement from the beginning and starting the permit process new would exceed the purchase price of the SCA project. Also during that time frame, avoided costs declined significantly. The value to SCA project of having a signed Power Purchase Agreement at a higher avoided cost is significant. As a point of reference, UP&L maintains that current avoided costs are approximately one-half of what they were in 1987.

The SCA project has experienced many difficulties along the way and many people believed it would never be built. Because of the financial difficulties associated with this project, including delays and the loss of investment tax credits, etc., the SCA project cannot afford to pay AML fees in addition to all of its other increased
expenses. For all of the reasons I have listed in my letter to OSM dated November 8, 1993 and those listed herein, this exemption should be granted for the SCA project.

SCA appreciates all your efforts in reviewing our request and hopes that you will give us every consideration in this matter. Thank you for your cooperation in this regard. If you have any questions, please feel free to contact me.

Very truly yours,

CALLISTER, DUNCAN & NEBEKER

Brian W. Burnett

BWB/mcm
cc: Lowell Braxton
    Joe Helfrich
    Randy Hardin
    David Pearce
    Alane Boyd
United States Department of the Interior

OFFICE OF SURFACE MINING
Division of Compliance Management
1800 New Circle Road, N.E.
Suite 102
Lexington, Kentucky 40503-4215

February 3, 1994

Mr. Joe Helfrich
Regulatory Program Coordinator
Division of Oil, Gas and Mining
335 W. North Temple
Suite 350
Salt Lake City, Utah 84180-1203

RE: Sunnyside Cogeneration Associates (SCA) Exemption Request

Dear Mr. Helfrich:

The Office of Surface Mining (OSM) is currently reviewing a request from SCA for exemption of coal mine waste from Abandoned Mine Land Reclamation Fees.

Until OSM renders a decision on SCA's Exemption Request, we will not require SCA to report and pay reclamation fees.

Sincerely,

JANE T. GRAY
Manager, Region II
Division of Compliance Management
Dec 10, 1993

Division of Oil, Gas & Mining
State of Utah
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

Re: Sunnyside Cogeneration Associates’ Permit No. ACT\007\035 Proposed Assessments for State Violation No. N93-26-3-1, and State Violation No. N93-26-4-1

Dear Joe:

Pursuant to your letters and proposed assessments in the matters set forth above, dated November 8, 1993, and November 24, 1993, Sunnyside Cogeneration Associates ("SCA") hereby informally appeals the fact of the above violations and/or the proposed penalty assessments for those violations pursuant to Utah Admin. Code R645-401-700. As you may know, SCA previously requested an informal hearing on these alleged violations by letter dated October 27, 1993, a copy of which is attached hereto and incorporated by reference herein.

SCA states as follows:

SCA has requested that the Office of Surface Mining ("OSM") determine that SCA is not required to pay abandoned mine land ("AML") fees on the waste coal utilized from SCA’s permit area. This letter was sent to OSM on November 8, 1993, a copy was previously provided to the Division of Oil, Gas and Mining ("DOGM"). A copy of the letter to OSM without the exhibits is attached hereto and incorporated by reference herein. OSM has received SCA’s request and responded with a letter dated November 26, 1993 stated that OSM is reviewing the matter, a copy of which is attached hereto and incorporated by reference herein.
Joseph C. Helfrich  
December 10, 1993  
Page 2

SCA does not believe that it should pay AML fees. If OSM agrees with SCA regarding the AML fee issue, violations regarding this issue will be void.

DOGM terminated Violation No. N93-26-3-1 on November 18, 1993, a copy of which is attached hereto and incorporated by reference herein.

Pursuant to the above information, SCA requests an informal conference and/or assessment conference regarding the above issues. Thank you for your cooperation in this regard. If you have any questions, please feel free to contact me.

Very truly yours,

CALLISTER, DUNCAN & NEBEKER

Brian W. Burnett  
Attorneys for Sunnyside Cogeneration Associates

cc: David Pearce  
Alane Boyd

G:\COMMON\PUBLIC\BWB\LTR97371-1

INCORPORATED
FEB 04 2003  
DIV OF OIL GAS & MINING
Re: Sunnyside Cogeneration Associates' Violation No. N93-26-3-1, Violation No. N93-26-4-1; Extension Request

Dear Jim:

On September 28, 1993, the Division of Oil, Gas & Mining ("DOGM") issued Violation No. N93-26-3-1 because Sunnyside Cogeneration Associates ("SCA") failed to provide records during the inspection that AML fees had been paid. On October 15, 1993, DOGM issued Violation No. N93-26-4-1 to SCA for failure to pay reclamation fees. In both circumstances mentioned above, SCA has until October 28, 1993 at 1:00 p.m. to abate the NOVs.

SCA hereby requests that this deadline be extended until the Office of Surface Mining ("OSM") rules on the applicability of AML fees to the SCA project. SCA will request an opinion from OSM on this issue within the next week. SCA hopes to have the matter resolved in the near future. SCA also hereby requests an informal hearing on the fact of the violations set forth above.

Thank you for your cooperation in this regard. If you have any questions, please feel free to contact me.

Very truly yours,

CALLISTER, DUNCAN & NEBEKER

Brian W. Burnett
Utah Counsel for Sunnyside Cogeneration Associates

cc: David Pearce
     Alane Boyd
Dear Mr. Tipton:

The State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining, ("DOGM"), has required Sunnyside Cogeneration Associates ("SCA") to pay Abandoned Mine Land Reclamation Fees under the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1232 (1986), 30 C.F.R. § 870 (1992) on the Sunnyside Refuse Pile ("Refuse Pile") owned by SCA and located near Sunnyside, Utah. After review of the Refuse Pile contents and the applicable Office of Surface Mining ("OSM") regulations and directives, it is our conclusion that SCA is not required to pay AML fees. We respectfully request a determination on this issue from OSM. Our facts and analysis of the issue are outlined in this letter. The supporting documents referred to in the letter are attached and labeled as exhibits.

FACTS

SCA, a Utah joint venture, owns the Refuse Pile near Sunnyside, Utah. The Refuse Pile contains the waste from the nearby Sunnyside Mine, which in addition to its coal mining operations, owns and operates a coal wash plant. Coal mine waste from the wash plant has been deposited on the Refuse Pile for approximately the past 50 years by several different business entities which have owned and operated the Sunnyside Mine. SCA is not associated with the Sunnyside Mine. The Refuse Pile contains approximately 9 to 10 million tons of coal mine waste. Roughly 6 to 7 million tons of the coal mine waste were deposited prior to 1977.
Two independent engineering firms have sampled the Refuse Pile on three separate occasions to determine its geologic contents. The first study was performed in September, 1987 by Applied Hydrology Associates ("AHA"). The study ("AHA study") is attached as Exhibit A. AHA drilled 13 holes in the Refuse Pile at varying depths from 13 to 120 feet and collected 52 samples from these drill holes at 10 foot intervals. Of the 52 samples taken, 8 are defined as fine coal refuse and represent 16% of the samples drilled. The other 44 samples are defined as coarse coal refuse, representing the other 84% of the drilled samples. AHA has determined that the "mean heating value of the 52 samples taken across the coarse and fine coal refuse is 6,200 Btu per pound," see AHA study, Exhibit "A", at 27. The coarse coal refuse, which is 84% of the Refuse Pile, has a mean heating value of 5,831 Btu per pound. See AHA study, Exhibit "A", at 26. The AHA study did not consolidate the data received from the analysis of the 52 samples for dry ash values within the pile. However, taking an average of the dry ash values for all samples taken, according to the AHA raw data found in the AHA study, Appendix B, the pile consists of 50.14% ash on a dry basis. See Summary, Exhibit "B". Data is not provided to clearly determine the coarse refuse dry ash content. However, the coarse refuse is reported as having a 51.18% ash content on a moist basis. See AHA study, Exhibit "A", at 26.

The second study was completed by the John T. Boyd Company ("Boyd") of Pennsylvania in March, 1991, and attached as Exhibit C, ("Boyd study"). Boyd drilled 11 holes in the Refuse Pile. 109 samples were collected by Boyd at 10 foot intervals. The mean heating value of the 109 coarse and fine samples, as determined by Boyd is 5,568 Btu per pound and the mean ash content is 55.19% on a dry basis. See Boyd study, Exhibit "C", Tabulation 2, at 17. The mean heating value of the coarse samples is 4,893 Btu per pound with a mean ash content of 61.86% on a dry basis. See Boyd study, Exhibit "C", Tabulation 3, at 21.

Boyd also sampled the Refuse Pile in September of 1992. Their report lists their determinations of the Refuse Pile contents combining the data received from the 1991 samples with the additional 1992 samples. Boyd found that for the 205 samples of coarse and fine refuse from 1991 and 1992 the mean heating value of the pile is 5847 Btu per pound and the dry ash content is 53.20%. See Boyd study #2, Exhibit "D", Table 2, at 11e. When considering the coarse refuse alone, the combined year results are 4,969 Btu per pound and 61.36% ash on a dry basis. See Boyd study #2, Exhibit "D", Table 4, at 13d.

Various options for disposing of this waste have been reviewed. Because the Refuse Pile is principally composed of ash, the coal mine waste is not saleable and therefore has no marketable value. There have been several attempts to process the waste by benefaction to make
a marketable product, but all attempts have proven to be uneconomical. Instead, SCA has determined to burn the waste in its facility to create electricity.

SCA's facility was certified by the Federal Energy Regulatory Commission ("FERC") in their docket QF 86-556-000, April 24, 1987, as a qualified cogeneration facility burning waste. For material to be classified as waste by FERC, the "refuse material must be both a by-product and currently have little or no commercial value." Kenvil Energy Corp., 23 F.E.R.C. ¶ 61,139 at 61,302 (1983). In Sunnyside Cogeneration Assocs., 39 F.E.R.C. ¶ 62,091 at 63,285 (1987), the Director of the Office of Electric Power Regulation held that "the bituminous coal refuse proposed for utilization as the primary energy source of the facility will meet the Commission's two part test for 'waste' material." SCA was recertified by FERC on February 11, 1992 as a small power production facility utilizing a waste material.

SCA's project was financed with the use of Solid Waste Disposal Refunding Revenue Bonds issued by Carbon County, Utah. Bonds of this type can only be utilized for projects which qualify for tax exempt status because they dispose of waste. SCA met that qualification. Additionally, no royalties are paid on utilization of the waste pile. SCA is the sole owner of the Refuse Pile.

SCA essentially obtained the Refuse Pile for free by taking on the environmental liability for its removal. Other owners of refuse piles have offered their material to SCA for free for assuming the reclamation obligations. The Sunnyside Refuse Pile must be reclaimed under SMCRA to eliminate attendant environmental hazards. The SCA project has been created to serve that end and would not exist but for the fact that the Refuse Pile is waste material in need of reclaiming and governmental economic incentives have been created to utilize this type of disposal.

SCA will utilize the coal mine waste in the Refuse Pile by first moving the waste from the existing Refuse Pile by means of a front-end loader to a truck and then to a hopper, located off the Refuse Pile, which will feed the waste to a crusher for grinding to a 1/4" X 0" size. A magnetic separator will remove tramp metal from the waste product prior to crushing to protect the crushing equipment from damage. After being crushed, the waste product will be mixed or blended with waste product from the Refuse Pile that does not require crushing. This blending of the waste is done to achieve a more uniform fuel for SCA's facility and to avoid the costs of unnecessary crushing. The waste material will then be combined with limestone and burned in a circulating fluidized bed boiler. The limestone is added to reduce the sulfur dioxide emissions of the facility. The entire Refuse Pile will
be removed and used as fuel for the SCA facility to create electricity. There will be no attempts to extract carbonaceous material from the refuse pile or to separate the carbonaceous material from the ash and sulfur. Additionally, no physical or chemical process will be used to clean, wash or enrich the refuse pile before it meets its end use of burning in the SCA facility.

SCA will sell its power to PacifiCorp., a local utility company, pursuant to the Public Utilities Regulatory Policies Act ("PURPA") which facilitates waste disposal operations that create energy. The SCA project has received PURPA approval for the energy that will be generated through the burning of the Refuse Pile, which has been found to qualify as waste for PURPA purposes. The SCA facility would not exist and be able to reclaim the Refuse Pile, but for PURPA approval and the tax-exempt bond financing available for this type of operation.

ANALYSIS

A. THE USE OF THE REFUSE PILE IS NOT SUBJECT TO RECLAMATION FEES BECAUSE THE REFUSE PILE DOES NOT MEET THE DEFINITION OF COAL.

30 U.S.C. § 1232(a) (1986) (emphasis added) states "All operators of coal mining operations subject to the provisions of this chapter shall pay to the Secretary of the Interior, ... a reclamation fee of 35 cents per ton of coal produced by surface coal mining ... ." 30 C.F.R. § 870.12 (1992) (emphasis added) requires that operators pay a reclamation fee on each ton of coal produced ... ." Coal is defined at 30 C.F.R. § 700.5 (1992) which states in relevant part:

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite" immediately above.

"[T]he ASTM has classified mineral matter-free coals by rank according to BTU content, ranging from 6,300 BTU's per pound to greater than 15,500 BTU's per pound." U.S.A. v. Brook Contracting Corp., 759 F.2d 320, 325 (3d Cir. 1985).

The contents of the Sunnyside Refuse Pile was calculated as having an average heating value of 6,200 Btu per pound in the AHA study and 5,568 Btu per pound and 5,847 Btu per pound in the Boyd studies. However, if the coarse coal samples, comprising 84 percent of the Pile, are considered separately the calculations are 5,831 Btu per pound and 4,893 Btu per pound and 4,969 Btu per pound, respectively. These Btu
calculations do not meet the listed standards set by the ASTM for the Classification of Coal in Standard D 388-77 and incorporated in the definition of coal at 30 C.F.R. § 700.5 (1992).

The Third Circuit Court has held that "as a matter of law, ... 'coal produced by surface coal mining' means combustible coal that would qualify as such under ASTM standards and excludes the weight of rock, clay, dirt, and other debris in the computation of the reclamation fee." Brook, 759 F.2d at 327. This ruling is based on the Courts' determination that "Congress intended to impose the fee on combustible coal only, and not, ... on additional tonnages of rock, clay and dirt." Brook, 759 F.2d at 325. Given the contents studies, the Refuse Pile by definition does not consist of coal according to the ASTM definitions.

Under OSM's new proposed definition of coal, as "combustible, carbonaceous rock composed principally of consolidated and chemically altered plant remains," 58 Fed. Reg. 52374, 52376 (1993) (to be codified at 30 C.F.R. § 700.5) (proposed October 7, 1993), the Refuse Pile still does not meet the definition of coal. As a whole the Refuse Pile contains 50.14% ash on a dry basis according to the AHA study and 55.19% ash and 53.20% ash on a dry basis in the Boyd studies. When considering the coarse refuse alone which makes up 84% of the Pile contents, the ash values are even higher, testing at 60.14% and 61.36% in the Boyd studies on a dry basis. (This calculation is not available from the AHA study.) Given the contents data, it is clear that the Refuse Pile does not meet the new proposed definition of coal because it is principally composed of ash and not combustible, carbonaceous rock. However, it can be described as containing coal mine waste.

Coal mine waste is defined at 30 C.F.R. § 701.5 (1992) and is defined as coal processing waste which is further defined as "earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal." The Refuse Pile meets this definition because it consists of the waste product produced by the Sunnyside Mine coal wash plant in the extraction of coal.

Both the average heating values and ash content data demonstrate that the Refuse Pile is composed of coal mine waste and not coal as defined in either the current regulations or the proposed regulations at 30 C.F.R. § 700.5. Because 30 C.F.R. § 870.12 (1992) only taxes coal and not coal mine waste, the use of the Sunnyside Refuse Pile is not subject to Abandoned Mine Land Reclamation fees.
B. SCA IS NOT ENGAGED IN A SURFACE COAL MINING OPERATION.

30 C.F.R. § 870.12(a) (1992) requires that an operator "pay a reclamation fee on each ton of coal produced for sale, transfer, or use, . . ." (emphasis added). SCA is engaged in the process of burning coal mine waste in its facility. No coal will be produced from or used in its transporting and blending of the Refuse Pile. The entire Refuse Pile consisting of coal mine waste will be burned to generate electricity. The reclamation fee does not apply where coal mine waste is simply used.

Furthermore, the fee computation in 30 C.F.R. § 870.13 (1992) applies to underground mining, surface mining, and in situ mining. Surface mining is defined as "the extraction of coal from the earth by removing the materials over the coal seam ... reclaiming coal operations are considered surface coal mining." 30 C.F.R. § 870.5 (1992). SCA is not engaged in surface coal mining as defined and used in Part 870 because there is no "extraction of coal from the earth" by any means. SCA will use coal mine waste from the Refuse Pile, but will not extract coal. While reclamation of coal from refuse piles is considered surface mining according to the definition of surface coal mining at 30 C.F.R. § 870.5 (1992), SCA is not in the business of "reclaiming or extracting coal" from the Refuse Pile and therefore does not meet any of the definitional categories for fee computation.

Finally, the United States District Court for the Northern District of West Virginia interpreted 30 C.F.R. § 870.12(b) (1992) to require that "coal from the gob piles would not be assessed a reclamation fee until it had been cleaned, processed, and sold." U.S. v. Spring Ridge Coal Co., 793 F.Supp. 124, 127 (N.D.W.Va. 1992). SCA is not cleaning, processing, or selling coal from the Refuse Pile contents. It is using the entire contents of coal mine waste in its facility to create electricity. 30 C.F.R. § 870.12(b)(1) (1992) (emphasis added) states that "... the use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit." No coal will be severed or removed from the Refuse Pile but the entire Refuse Pile consisting of coal mine waste will be burned for energy. Because no coal will be produced or used from this disposal operation, but rather coal mine waste will be used, SCA is not engaged in surface mining operations, and therefore does not owe AML reclamation fees.

C. THE VALUE OF THE COAL MINE WASTE IS ZERO.

"The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than $3.50 per ton, in which case the fee is 10 percent of
the value." 30 C.F.R. § 870.13 (1992). AML fees are determined by the gross value of each ton of coal produced at the time of bona fide sale, transfer, or use by the operator. 30 C.F.R. §§ 870.12(a,b), 870.5 (1992). The Sunnyside Refuse Pile consists of coal mine waste and has no value. No AML fees should be paid for using the Reuse Pile.

SCA's facility was certified by FERC as a qualified cogeneration facility burning waste. For material to be classified as waste by FERC, the refuse material must be both a by-product and currently have little or no commercial value. In 1987, FERC held that "the bituminous coal refuse proposed for utilization as the primary energy source of the facility will meet the Commission's two part test for 'waste' material." 39 F.E.R.C. ¶ 62,091 at 63,285 (1987). SCA was recertified by FERC on February 11, 1992 as a small power production facility utilizing a waste material.

The act of burning the coal mine waste creates value for the generation of electricity, but only because the Refuse Pile qualifies as a waste product under PURPA which requires utilities to purchase power generated from facilities like SCA that dispose of waste material. The fact that the Refuse Pile has no value and is waste provides the only reason the SCA project exists.

SCA's project was financed with the use of Solid Waste Disposal Refunding Revenue Bonds issued by Carbon County, Utah. Bonds of this type can only be utilized for projects which qualify for tax exempt status because they dispose of waste. SCA met that qualification. Additionally, no royalties are paid on utilization of the Refuse Pile. SCA is the sole owner of the Refuse Pile.

SCA essentially obtained the Refuse Pile by assuming the environmental liability for its removal. Other owners of refuse piles have offered their material to SCA for free for assuming the reclamation obligations. Many attempts have been made to put the Refuse Pile to beneficial use to create a marketable product. All attempts have failed. The Refuse Pile will not bear further extraction and has such a high ash content it is not saleable to anyone for coal extraction.

The Sunnyside Refuse Pile must be reclaimed under SMCRA to eliminate attendant environmental hazards. The SCA project has been created to serve that end and would not exist but for the fact that the Refuse Pile is waste material in need of reclaiming and governmental economic incentives have been created to utilize this type of disposal.

OSMRE Directive AML-14 discusses when AML fees are required for material recovered from abandoned coal refuse piles. In the Directive,
OSM sets the value of anthracite culm bank material produced before August 3, 1977 at zero, and accordingly the material is exempt from AML fees. It is therefore consistent to exempt bituminous material from AML fees when there is no distinction in the process that created the materials. Approximately 70% of the Refuse Pile was deposited prior to 1977.

The materials handling costs per ton associated with the coal mine waste, limestone, and ash disposal are significant, not to mention the environmental costs associated with the Refuse Pile. Adding AML fees to the costs of the SCA project further damages a marginal operation. Essentially, SCA is engaged in a federally encouraged and licensed waste disposal operation. Because the waste itself has no value, no AML fees are owing upon its elimination in SCA’s facility.

D. ALTERNATIVELY, THE REFUSE PILE IS EXEMPT FROM AML FEES BASED ON THE INCIDENTAL COAL EXTRACTION EXEMPTION.

If the fine and coarse coal in the Refuse Pile is considered separately, the coarse coal clearly meets the definition of coal mine waste with mean heating values of 5,831, 4,893, and 4,969 Btu per pound, from the three studies, and ash content values of 60.14% and 61.36%, according to the two Boyd studies, respectively. (See the Discussion in Section A above incorporated here by reference.) The coarse coal makes up 84% of the Pile contents according to the AHA study.

Federal Regulation 30 C.F.R. § 870.11(d) (1992) excepts the "extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total tonnage of coal and other minerals removed for commercial use or sale." Even if the fine refuse is considered coal, it is only 16% of the Pile contents. Use of the Refuse Pile can therefore at best be described as the extraction of coal incidental to the extraction of other minerals according to 30 C.F.R. § 870.11(d) (1992) and thus is excepted from owing AML reclamation fees.

E. PUBLIC POLICY FAVORS A DECISION FOR SCA

The legislature, in enacting the Abandoned Mine Land Reclamation Fund, intended to create a fund for the reclamation of the abandoned mines and tailings piles across the country created by coal mining prior to August 3, 1977. To fund this operation a tax or fee was enacted to be levied on all coal mined after that date. The Sunnyside Refuse Pile would be eligible for reclamation funding, because it was created long before 1977, but for the fact that it is not an abandoned site and is still connected with the mining operation at the Sunnyside
Mine as a disposal site. The Refuse Pile requires reclamation under SMCRA, but is worthless for further coal extraction or other beneficial uses other than to be burned to generate electricity. Through this burning process, a waste product will become energy and the Refuse Pile will be "reclaimed" which will be an environmental benefit. As a matter of public policy, requiring the payment of AML fees on the Sunnyside Refuse Pile would not be beneficial to the environment and the ultimate statutory goal of coal mine and refuse reclamation.

PURPA was passed to encourage funding and development of alternative energy resources including the use of waste resources. This public policy was further implemented by the financing opportunities which encourage the disposal of waste. The SCA project is an example of the public policy favoring the use of a waste for a beneficial purpose.

The only way a waste coal fired generating unit is economically feasible is to obtain the rights to the coal refuse for free. The materials handling costs per ton associated with the coal mine waste, limestone, ash disposal, and the environmental costs associated with the coal refuse are significant. Adding AML fees at any rate to those expenses creates additional financial hardships. The SCA project is already a reclamation project. A levy of reclamation fees on each ton of waste coal used by the project is like charging a reclamation fee to an AML contractor on an AML contract.

SUMMARY

With the foregoing facts, rulings, and regulations in mind, we respectfully request that OSM determine that SCA is not required to pay AML fees on the Sunnyside Refuse Pile. The Refuse Pile is exempt from AML fee regulations for the following reasons:

1. The Refuse Pile consists of coal mine waste and not coal therefore no AML reclamation fees are owing.

2. Use of the Refuse Pile does not involve coal production of any kind, which is required to determine the AML fee. Further, because no coal is produced through severance or extraction from the earth, SCA is not engaged in a surface mining operation and therefore SCA does not come under any of the definitions for fee determination.

3. Because the Refuse Pile consists of coal mine waste and has no marketable value for benefaction and its use has been licensed for power generation purposes because it has no value and is waste, no AML fees are owing from its disposal.
4. Alternatively, if the fine refuse is deemed to be coal, it is still only 16 percent of the Refuse Pile contents and therefore only the incidental extraction of coal from coal mine waste. Therefore no AML fees are owed.

5. Finally, from a public policy viewpoint, a ruling in favor of SCA would be beneficial both economically and environmentally and be in keeping with the purpose behind the Abandoned Mine Land Reclamation Act and PURPA.

For all the foregoing reasons, we submit this letter for your determination. We appreciate your consideration of this matter. If you have any questions or need further information please call me at 530-7428 or Kathryn C. Knight at 530-7447. We look forward to hearing from you on this matter.

Sincerely yours,

CALLISTER, DUNCAN & NEBEKER

Brian W. Burnett

Enclosures
cc: James W. Carter
    David Pearce
    Alane Boyd
    Brent Blauch
Mr. Brian W. Burnett
Calister, Duncan & Nebeker
Attorneys at Law
Suite 800, Kennecott Building
Salt Lake City, Utah 84133

Dear Mr. Burnett:

Thank you for your letter of November 8, 1993, to Mr. W. Hord Tipton, in which you requested that the Office of Surface Mining Reclamation and Enforcement (OSM) provide a determination with regard to an exemption for reclamation fee payment on coal mine waste that is contained in the Sunnyside Refuse Pile, Sunnyside, Utah, and used by Sunnyside Cogeneration Associates.

OSM is reviewing your request, together with the supporting documentation you provided. Upon completion of our review, we will notify you of our determination.

Sincerely,

Ed Kay
Acting Deputy Director
VACATION/TERRMINATION OF
NOTICE OF VIOLATION/CESSATION ORDER

To the following Permittee or Operator:
Name: Sunnyside Co-generation Associates
Mailing Address: P.O. Box 58087 Salt Lake City, UT 84158-0087
State Permit No.: ACT/007/035

Utah Coal Mining & Reclamation Act, Section 410-1 et seq., Utah Code Annotated (1953):
Cessation Order No. C ___________ dated __________, 19 __.

Part ___ of ___ is ☐ vacated ☐ terminated because letter provided by OSM Denver, copy attached hereto, states that the permittee has not paid required AML fees. Therefore, it can only be concluded that no records were prepared on this matter. Furthermore, the permittee did not provide the undersigned any records after the NOV was issued to demonstrate such records have been prepared and maintained. This NOV is hereby terminated with an effective date October 28, 1993.

Part ___ of ___ is ☐ vacated ☐ terminated because ____________________________

Date of service/mailing: November 18, 1993
Time of service/mailing: 3:00 p.m.

Sunnyside Co-generation Associates
Permittee/Operator representative

[Signature]

Mr. J. Malencik
Division of Oil, Gas & Mining
[Signature]

Reclamation Specialist
[Signature]

This document is an equal opportunity employer.
Mr. Bill Malencik
Division of Oil, Gas and Mining
P.O. Box 169
451 E. 400th North
Price, Utah 84501-2699

Dear Mr. Malencik:

Thank you for your telephone call to JoAnn Hagan on September 28, 1993, notifying her that Sunnyside Cogeneration Associates, P.O. Box 58087, Salt Lake City, Utah 84158, was actively mining on permit No. ACT007035. The company has not paid reclamation fees. We checked with Steve Rathbun at the Albuquerque Field Office, who said that the company should be paying fees at the surface rate of $.35 per ton.

We will send the company a Coal Reclamation Fee Report, OSM-1. Again thank you for this information. If we can be of further assistance to you, please call JoAnn Hagan at (303) 236-0368.

Sincerely,

Roy E. Morris
Chief, Division of Financial Management