

Document Information Form

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To: DOGM

From:

Person N/A  
Company By and between KANAWHA AND HOLDING COAL AND COKE Co & ENERGY FUELS CORPORATION

Date Sent: 10/10/1980

Explanation:

EASEMENT AGREEMENT.

cc:

File  
CI 007/001, 1980 Incoming

Refer to:

- Confidential
- Shelf
- Expandable

Date \_\_\_\_\_ For additional information

Exhibit H

file 007/0121

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT made and entered into this 15th day of September, 1975, by and between KANAWHA AND HOCKING COAL AND COKE COMPANY, a West Virginia corporation (hereinafter referred to as "Kanawha & Hocking") and ENERGY FUELS CORPORATION, a Colorado corporation (hereinafter referred to as "Energy").

W I T N E S S E T H :

WHEREAS, Energy now owns or will hereafter acquire interests in real property in the vicinity of Eccles Canyon, Carbon County, State of Utah, and

WHEREAS, the parties have entered into a certain Exchange Agreement of even date herewith and this Easement Agreement is executed in partial consideration of the Exchange Agreement, and

WHEREAS, Kanawha & Hocking now owns or will hereafter acquire certain other interests in real property in the vicinity of Eccles Canyon, Carbon County, State of Utah, and

WHEREAS, Energy desires to obtain an easement over and across the property which Kanawha & Hocking now owns or may hereafter acquire for coal loading and temporary coal storage facilities, and

WHEREAS, it is recognized that Kanawha & Hocking can grant to Energy, subject to easements of record, the easement which Energy desires for coal loading and storage facilities without unduly interfering with the coal loading, storage and other operations of Kanawha & Hocking and its lessees on said lands, and

WHEREAS, the parties hereto are desirous of locating their respective coal loading and storage facilities on the lands which Kanawha & Hocking now owns or will hereafter acquire so that each party may own and operate separate conveying facilities for the

*Received from Mr. Reynolds*

File in:

- Confidential
- Shelf
- Expandable

Refer to Record No. 5001 Date 10-10-80  
In C007-001, 1980 Incoming  
For additional information

*Exhibit H*

*file 007/014*

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*Received from Mr. Hayes 10-10-80* **OCT 10 1980**

transporting of coal to and from the separate storage areas to separate railroad car loading facilities at two locations on the existing railroad right-of-way.

NOW, THEREFORE, the parties hereto agree as follows:

1. Kanawha & Hocking agrees, subject to its right to exclude certain lands as provided in Subparagraph 2(a) hereof, to transfer, assign and convey to Energy, its successors and assigns forever, an exclusive and perpetual easement which will guarantee to Energy access to and the use of 20 acres, to be selected by Energy as provided in Subparagraph 2(b) hereof, within and upon the following described premises (hereinafter called the "Subject Premises"):

Township 13 South, Range 7 East, SLB&M  
Section 17: S1/2SE1/4

Such easement shall provide Energy with assured land access from the western boundary of the Subject Premises to either the eastern boundary of the Subject Premises or the Denver & Rio Grande Western Railroad (D&RGW) right-of-way lying within the Subject Premises.

In addition to the 20-acre easement to be granted by Kanawha & Hocking to Energy, Kanawha & Hocking shall grant to Energy additional easements for utilities and access roads across or through the remainder of the Subject Premises; provided however, that such additional easements shall be granted in accordance with the provisions of Paragraph 3 hereof. All present and existing rights-of-way for railroad, road purposes or easements of record shall be excluded when calculating the 20 acres to be included in the easement to be granted to Energy.

The 20-acre easement to be granted by Kanawha & Hocking to Energy shall be selected in accordance with the provisions of Paragraph 2 hereof and shall be used by Energy for the permitted uses and purposes specified in Paragraph 4 hereof and the other uses and purposes to be granted hereunder.

2. The 20-acre easement to be granted by Kanawha & Hocking to Energy shall be selected and defined, strictly in accordance with the following provisions:

(a) Kanawha & Hocking shall, on or before January 1, 1977, select and define a single tract of ground containing no more than 20 net acres, after first deducting all easements and rights-of-way of record which lie within said tract, within and upon the Subject Premises which Kanawha & Hocking shall initially use for only those permitted purposes and uses specified in Paragraph 5 hereof (the "K&H Parcel") and Kanawha & Hocking shall, on or before January 1, 1977, submit to Energy a description of that portion of the Subject Premises to be included in the K&H Parcel; provided however, that when Kanawha & Hocking so selects and defines the K&H Parcel, the said Kanawha & Hocking shall leave so much of the remaining Subject Premises available to guarantee and insure that Energy shall: (i) have the right to select and use 20 acres from the Subject Premises for the purposes specified in Paragraph 4 hereof; (ii) and to further guarantee that Energy shall have the right to select and use said 20 acres so that it will provide Energy with a minimum 200 foot wide easement for land access from the western boundary of the Subject Premises to either the eastern boundary of the Subject Premises or, at Energy's option, the D&RGW right-of-way lying within the Subject Premises; and provided further, that the guarantees given by Kanawha & Hocking to Energy under this Easement Agreement are as between the parties hereto, their successors and assigns only, and shall terminate upon the selection of the Energy Parcel as hereinafter provided and that

said guarantees shall not be construed or interpreted to mean that Kanawha & Hocking guarantees to Energy access across existing easements of record or other property rights under the control of third parties.

(b) At any time after either Kanawha & Hocking has selected and defined the K&H Parcel in accordance with Subparagraph 2(a) above or January 2, 1977, whichever date shall first occur, Energy shall select and define a single tract, which tract shall contain a total of 20 net acres after first deducting all easements and rights-of-way of record which lie within said tract (hereinafter referred to as the "Energy Parcel"), and Energy shall, on or before January 1, 1978, submit to Kanawha & Hocking a metes and bounds description of the Energy Parcel. Kanawha & Hocking, within 60 days of receipt of said description, shall consent to Energy's selection of the Energy Parcel, or in the event of unreasonable interference with Kanawha & Hocking's permitted use of the K&H Parcel, as specified in Paragraph 5 hereof, make such reasonable deletions, additions or modifications as necessary to avoid unreasonable interference with Kanawha & Hocking's said permitted use of the K&H Parcel. After making such deletions, additions or modifications as may be required to satisfy the terms hereof, Kanawha & Hocking shall, within said 60 days after receipt of the metes and bounds description from Energy, furnish the Escrow Agent with an executed and acknowledged Easement Deed as provided in Paragraph 8 hereof. The consent of Kanawha & Hocking to either the selection by Energy of the lands for inclusion in the Energy Parcel or of the Energy Parcel as may be modified by Kanawha & Hocking shall not be

withheld. Any proposed modification, deletion or addition made by Kanawha & Hocking shall insure that Energy will acquire the total acreage, usage and access rights guaranteed to Energy under the terms of this Easement Agreement.

3. In addition to, and not in lieu of, all or any portion of the Energy Parcel, Kanawha & Hocking agrees that Energy shall have the right to cross any remaining portion of the Subject Premises and the K&H Parcel for access or utility purposes, including guaranteed access to and across the western boundary of the Subject Premises to Eccles Canyon by conveyor belt, subject to the consent and approval of Kanawha & Hocking, which consent shall not be unreasonably withheld, provided that such use by Energy does not unreasonably interfere with Kanawha & Hocking's use of the K&H Parcel, and further provided that such use by Energy is related to Energy's permitted usage, as defined in Paragraph 4 hereof, of the Energy Parcel. Such use shall be granted by Kanawha & Hocking to Energy without compensation to Kanawha & Hocking, and Kanawha & Hocking shall execute, acknowledge and deliver all instruments to place of record the grant of such additional easements

4. Energy's use of the Energy Parcel after it has been selected shall be limited to the construction, location, operation and maintenance of facilities for the transportation, temporary storage and loading of coal into railroad cars and other related and ancillary uses necessary or convenient for the enjoyment of such uses. The crushing, screening or other processing of coal and storage of coal in open stockpiles are specifically prohibited. All coal shall be stored in enclosed storage facilities, such as silos or other types of enclosed coal storage facilities. Energy's use shall include all rights necessary or convenient to construct, locate, operate and maintain such facilities as Energy shall determine necessary for its permitted uses,

including but not limited to conveyor systems, temporary coal storage facilities, power lines, electrical substations, water and sewer lines, roads, buildings, fences and any other installation or facility consistent with Energy's permitted uses.

5. Kanawha & Hocking's use of the Subject Premises shall be limited solely and exclusively to those purposes and uses specified in Paragraphs 12 and 13 hereof until such time as Kanawha & Hocking has selected and defined the acreage to be included in the K&H Parcel, as required in Paragraph 2(a) hereof, and thereafter Kanawha & Hocking's use of the K&H Parcel and the Subject Premises shall be limited solely and exclusively to those permitted purposes and uses specified in Paragraph 4 hereof until such time as Energy has selected the Energy Parcel and Kanawha & Hocking has deposited the Easement Deed to the Energy Parcel with the Escrow Agent, as provided in Paragraph 8 hereof, and after such fully executed and acknowledged Easement Deed has been delivered to said Escrow Agent, Kanawha & Hocking shall have the right to use the balance of the Subject Premises, including the K&H Parcel but excluding the Energy Parcel, in accordance with the provisions of Paragraph 6 hereof and for whatever other usage, subject to whatever additional easements that are granted to Energy under Paragraph 3 hereof, that Kanawha & Hocking may choose.

6. If at any time within a term of 20 years from the date hereof and subject to the provisions of Paragraph 5 hereof, Kanawha & Hocking should elect to use any portion of the Subject Premises, including the K&H Parcel but excluding the Energy Parcel, for any uses or purposes other than those uses or purposes specified for Energy in Paragraph 4 hereof, then Kanawha & Hocking shall grant to Energy an equal and like use on the Energy Parcel and shall execute, acknowledge and deliver all instruments necessary to place of record the grant of

such additional uses. Upon the expiration of the 20-year period, Energy's use of the Energy Parcel and other easements granted to Energy hereunder shall be for those uses granted pursuant to this Easement Agreement plus any additional uses or purposes obtained during the said 20-year period.

7. As full, complete and total consideration for the easements granted and to be granted hereunder, except as provided in Paragraph 15 hereof, Energy agrees to pay to Kanawha & Hocking the following sums on or before the dates shown below:

- (a) \$127,700 upon execution of this Easement Agreement;
- (b) \$62,500 plus accrued interest on or before July 23, 1976;
- (c) \$62,500 plus accrued interest on or before July 23, 1977;
- (d) \$100,000 plus accrued interest on or before July 23, 1978.

Interest shall be charged from the date hereof on the unpaid portions of the purchase price at the rate of eight per cent (8%) per annum. All payments made hereunder shall be applied first to interest and second to the payment of the outstanding principal. Energy shall have the right of prepayment of the above amounts without penalty.

8. The parties shall, concurrently with the execution of this Easement Agreement or as soon thereafter as possible, designate the Walker Bank and Trust as Escrow Agent to act in accordance with the provisions of this Paragraph 8. Immediately upon selection of the Energy Parcel in accordance with the provisions of Paragraph 2 hereof, Kanawha & Hocking shall execute and deliver to the Escrow Agent an Easement Deed, which Easement Deed shall describe the Energy Parcel and shall be substantially in the form attached hereto as Exhibit A.

The Escrow Agent will be instructed as follows: Energy shall pay the Escrow Agent and the Escrow Agent shall promptly remit to Kanawha & Hocking all payments received from Energy under the provisions of Subparagraphs 7(b), (c) and (d) hereof, and the Escrow Agent shall be further instructed that upon payment in full as set forth in Subparagraphs 7(b), (c) and (d) hereof to immediately release to Energy the Easement Deed as above described. In the event of Energy's failure to make any payment when the same shall become due or should Energy fail to select the Energy Parcel by January 1, 1978, Kanawha & Hocking shall immediately notify Energy and the Escrow Agent and if Energy fails to make payment or submit proof of payment or select the Energy Parcel within 30 days following such notice to Energy of such delinquency, the Escrow Agent shall deliver to Kanawha & Hocking the Easement Deed held by it and all parties shall be released from all obligations hereunder and this Easement Agreement shall terminate.

In the event of Energy's default and the release of the Easement Deed by the Escrow Agent to Kanawha & Hocking, as above described, or in the event of a termination of this Easement Agreement pursuant to the provisions of Paragraph 21 of the Exchange Agreement, Kanawha & Hocking may re-enter and take possession of all the Subject Premises and all payments which have been made heretofore under this Easement Agreement shall be forfeited to Kanawha & Hocking as liquidated damages for the nonperformance of this Easement Agreement. Notwithstanding anything herein contained to the contrary, in the event of the failure of the McKinnons to execute the sublease as set forth in Paragraph 9 of the Exchange Agreement between Energy and Valley Camp of Utah, Inc., executed on even date herewith, and the Exchange Agreement terminates, then this Easement Agreement shall also terminate, and in that event Kanawha & Hocking shall immediately return to Energy all amounts paid

pursuant to this Easement Agreement and upon written notice to the Escrow Agent of such repayment to Energy, the Escrow Agent shall release to Kanawha & Hocking the Easement Deed. This Easement Agreement is attached to and made a part of said Exchange Agreement and by this reference, said Exchange Agreement is made a part of this Easement Agreement.

9. Energy agrees that Kanawha & Hocking shall have the right to cross any portion of the Energy Parcel for access or utility purposes, subject to the consent and approval of Energy, which consent shall not be unreasonably withheld, provided that such use by Kanawha & Hocking does not unreasonably interfere with Energy's use of the Energy Parcel, and further provided that such use by Kanawha & Hocking shall be limited to support those uses specified in Paragraph 5 hereof. Such use shall be granted by Energy to Kanawha & Hocking without compensation to Energy, and Energy shall execute, acknowledge and deliver all instruments necessary to place of record the grant of such additional easements.

10. Both parties understand and agree that one or more additional rail lines may be necessary or convenient for the uses and purposes of the Subject Premises pursuant to this Easement Agreement and both parties agree that if such additional rail lines are to be constructed, such additional lines shall be substantially parallel to the existing rail lines of the D&RGW and shall not unduly interfere with said D&RGW facilities; provided however, that if either party elects to construct an additional rail line or lines outside the boundaries of the present D&RGW right-of-way on the Subject Premises, then the acreage required for such additional line or lines shall be included in the K&H Parcel if constructed by Kanawha & Hocking or in the Energy Parcel if constructed by Energy. Each party grants the other the right

to construct facilities to span, at minimum clearances required by the D&RGW, all rail lines so constructed.

11. Kanawha & Hocking and Energy agree that any easements for utilities or access, excluding railroad, now existing or hereafter located on parcels selected by the parties pursuant to this Easement Agreement may be relocated by the party selecting the parcel, at its sole expense, provided that such relocation does not unreasonably interfere with the other party's then existing operations or use of its selected parcel.

12. With the exception of roads, Kanawha & Hocking agrees that it will not construct or cause to be constructed any permanent improvements on the Subject Premises except on the K&H Parcel until such time as the Energy Parcel has been selected in accordance with Paragraph 2 hereof. At any time after the expiration of 60 days from the date of delivering the metes and bounds description of the Energy Parcel to Kanawha & Hocking, as provided in Subparagraph 2(b) hereof, Energy shall have possession of the Energy Parcel and the guaranteed right as against Kanawha & Hocking to commence construction, operation and maintenance of any and all facilities for Energy's permitted usage thereof, as described in Paragraph 4 hereof; provided however, that Energy is, at the time of commencement of said construction and operation, current on all payments as set forth in Paragraph 7 hereof and not otherwise in default hereunder.

13. Prior to the selection by Energy of the Energy Parcel, Energy and its employees shall have, and are hereby granted, reasonable access to the Subject Premises for the purposes of surveying, mapping, soil testing and similar activities necessary to plan and design its proposed coal storage and loading facilities. All such activities by Energy and its employees shall be conducted in accordance with local,

state and federal laws, regulations and ordinances and shall not unduly interfere with the use of the Subject Premises by Kanawha & Hocking. Energy agrees to indemnify and save harmless Kanawha & Hocking from any and all liability or damages and expense of litigation in respect to all claims arising at any time hereafter out of or in any manner appertaining to the use of the Subject Premises by Energy.

14. Energy agrees that prior to the selection of the Energy Parcel it will not commit or suffer to be committed any waste, spoil or destruction upon the Subject Premises and that following any of its planning and testing activities upon the Subject Premises, it will reclaim any surface disturbance to a condition equal to that prior to such activities.

15. In addition to the consideration herein specified to be paid by Energy, Energy agrees to reimburse Kanawha & Hocking for one-half of all real estate taxes levied and assessed upon the Subject Premises prior to delivery of the Easement Deed and such reimbursement shall be made within 30 days after receipt of an invoice from Kanawha & Hocking showing the amount of such taxes due and owing to Kanawha & Hocking. Kanawha & Hocking shall timely furnish to Energy proof of payment of all such real estate taxes. Each party shall be solely responsible for any and all taxes, levies and assessments against personal property and improvements owned by it or in any way used by it in connection with the Subject Premises or any interest it might have or acquire in the Subject Premises. Following delivery of the Easement Deed to Energy, Energy shall be solely responsible for taxes assessed against the lands affected thereby, and its obligation to pay one-half of all taxes and assessments against the Subject Premises shall terminate.

16. All notices, payments and other communications required or necessary hereunder shall be personally delivered or mailed by registered or certified mail, postage prepaid, and if mailed shall be deemed timely if postmarked on or before the last day of the period in which such notice, payment or other communication may be given. For the purposes of this Easement Agreement, the addresses of the parties, until changed by written notice as herein provided, shall be as follows:

KANAWHA AND HOCKING COAL AND COKE COMPANY  
P. O. Box 507  
Clear Creek, Utah 84517

ENERGY FUELS CORPORATION  
Suite 445 - Three Park Central  
1515 Arapahoe Street  
Denver, Colorado 80202

17. In the event Kanawha & Hocking shall fail to select and define the K&H Parcel by January 1, 1977, as required by Subparagraph 2(a) hereof, Energy shall have the sole, exclusive and prior right to select the Energy Parcel from any location of its choice upon the Subject Premises which right may be exercised by Energy without the consent or approval of Kanawha & Hocking, and said right of prior and unrestricted selection shall continue until January 1, 1978. If Kanawha & Hocking has not made its selection of the K&H Parcel on or before January 1, 1977, it shall not make its selection until after the Energy Parcel has been so selected by Energy or January 1, 1978, whichever date shall first occur. With the exception of providing Energy with the prior and unrestricted right of acreage selection, as provided in this Paragraph 17, all of the other rights, obligations and duties of the parties hereto shall be as specified under the terms of this Easement Agreement.

18. The specific remedies as above described shall be cumulative and not exclusive, and each party shall have the right to pursue any

and all remedies available under the laws of the State of Utah for violation of any covenant or condition hereof, and the laws of the State of Utah shall govern this Easement Agreement.

19. It is expressly understood and agreed by the parties hereto that the acreage, usage and access guarantees that have been and are to be granted to Energy hereunder are specific, unique and essential considerations which Energy has been and is relying upon as additional considerations for its agreement to enter into the Exchange Agreement of even date herewith, which Exchange Agreement is made a part of this Easement Agreement.

20. This Easement Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. This Easement Agreement shall survive the execution and delivery of the Easement Deed required herein and shall be deemed not to have merged therein. The term of this Easement Agreement shall not exceed 20 years from the date hereof.

KANAWHA AND HOCKING COAL AND COKE COMPANY

By Ray Allale

ENERGY FUELS CORPORATION

By Robert W. Adams

ATTEST:

Charles J. Dixon  
Assistant Secretary

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

On the 26th day of September, 1975, personally appeared before me ROBERT A. MARKLE, who, being by me duly sworn, did say that he is the Vice President of KANAWHA AND HOCKING COAL AND COKE COMPANY, a West Virginia corporation, and that said instrument was