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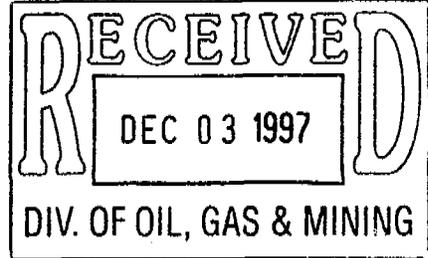


**CYPRUS PLATEAU
MINING CORPORATION**
A Cyprus Amax Company

Cyprus Plateau Mining Corporation
Post Office Drawer PMC
Price, Utah 84501
(801) 637-2875

December 1, 1997

Mr. Lowell Braxton, Acting Director
Utah Division of Oil, Gas and Mining
1594 West North Temple, Ste 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801



*Supposed file
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Re: Approval of Castle Gate Revised Legal Description and Issuance of a Revised Permit, AMAX Coal Company, Castle Gate Mine, (ACT/007/004-97A) Carbon County, Utah

Dear Mr. Braxton:

Enclosed is a fully executed original of the above-referenced revised Permit. I would like to bring to your attention that page 5 reflects a duplicate Section 18 from page 4. With regard to said Section 18, please note the attached copy of the Settlement Agreement in the Pittston litigation. This should allow you to remove the special permit stipulation clause altogether.

If you have any questions, please do not hesitate to contact me at (435) 472-4741.

Sincerely,

Johnny Pappas
Sr. Environmental Engineer

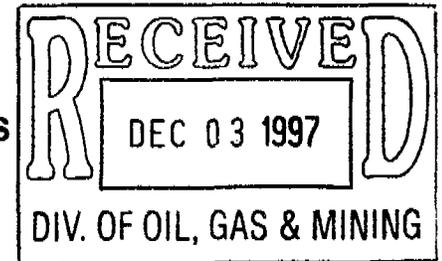
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FEDERAL

PERMIT
ACT/007/004

November 4, 1997

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801



This permit, ACT/007/004, is issued for the State of Utah by the Utah Division of Oil, Gas and Mining (Division) to:

Amax Coal Company
P. O. Drawer PMC
Price, Utah 84501
(801) 637-2875

for the Castle Gate Mine. Amax Coal Company has rights of entry to the permit area described below, and these rights of entry are contained in leases, subleases and related documentation. A Surety Bond is filed with the Division in the amount of \$1,804,000, payable to the State of Utah, Division of Oil, Gas and Mining and the Office of Surface Mining Reclamation and Enforcement (OSM).

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 underground coal mining activities on the following described lands within the permit area at the Castle Gate Mine situated in the state of Utah, Carbon County, and located in:

Township 12 South, Range 9 East, SLB & M

- Section 22:** Portions of SE1/4 SW1/4 and S1/2 SE1/4
- Section 26:** Portions of W1/2
- Section 27:** Except portions of NW1/4 and NW1/4 NW1/4 SW1/4
- Section 28:** Except portions of SE1/4 SE1/4 NE1/4, SE1/4, and SW1/4
- Section 29:** All except N1/2 NW1/4, NW1/4 NE1/4 and portions of S1/2 NE1/4, and N1/2 SE1/4
- Section 30:** All except N1/2 N1/2
- Sec. 31, 32,**
- Sec. 33, 34:** All
- Section 35:** Portions of N1/2, W1/2 SW1/4, and SE1/4

Township 13 South, Range 9 East, SLB & M

- Section 1:** Portions of NW1/4 NW1/4
- Section 2:** Portions of NE1/4 and NW1/4
- Section 3:** NW1/4 and portions of NE1/4, SE1/4 and SW1/4
- Section 4:** N1/2 and portions of SE1/4 and SW1/4
- Section 5:** NE1/4 and portions of NW1/4, SE1/4 and SW1/4
- Section 6:** N1/2 and portions of SW1/4 and SE1/4
- Section 8:** Portion of NE1/4
- Section 9:** Portions of NE1/4, NW1/4 and SW1/4
- Section 10:** Portions of NE1/4 and NW1/4

This legal description is for the permit area of the Castle Gate Mine as shown on Plate 1-1 of the approved Mining and Reclamation Plan. The permittee is authorized to conduct underground coal mining activities and related surface activities on the foregoing described property subject to the conditions of all 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 expires on December 24, 1999.
- Sec. 5** **ASSIGNMENT OF PERMIT RIGHTS** - The permit rights may not be transferred, assigned or sold without the prior written approval of the Division Director. 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 R645-303-300.
- Sec. 6** **RIGHT OF ENTRY** - The permittee shall allow the authorized representative of the Division, including but not limited to inspectors, and representatives of the Office of Surface Mining Reclamation and Enforcement (OSM), 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, R645-400-220, 30 CFR 842.13 and R645-400-110;
- (b) be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by a 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 approved plan and approved for the term of the permit and which are subject to the performance bond.

Sec. 8 **ENVIRONMENTAL IMPACTS** - The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

- (a) Any accelerated or additional monitoring necessary to determine the nature 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 noncompliance.

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 the Division 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 PAYMENTS** - The operator 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 with 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 the Division. The Division, after coordination with OSM, shall inform the permittee of necessary actions required. The permittee shall implement the mitigation measures required by Division within the time frame specified by Division.
- Sec. 17** **APPEALS** - The permittee shall have the right to appeal as provided for under R645-300-200.
- Sec. 18** **SPECIAL CONDITIONS** - There are special conditions associated with this permitting action as described in Attachment A.

Sec. 18 SPECIAL CONDITIONS - There are special conditions associated with this permitting action as described in Attachment A.

The above conditions (Secs. 1-18) 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 the Division and the permittee at any time to adjust to changed conditions or to correct an oversight. The Division may amend these conditions at any time without the consent of the permittee in order to make them consistent with any federal or state statutes and any regulations.

THE STATE OF UTAH

By: James P. Brien

Date: 11/4/97

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

PERMITTEE

Frank J. Wood
Authorized Representative of Permittee

11/20/97
Date

ACT/007/004
Permit
November 4, 1997
Page 6

ATTACHMENT A

Special Permit Stipulation - Within fourteen (14) days of completion of the resolution of the Pittston litigation, as referenced in the Applicant Violator System OSM recommendation, Amax Coal Company will notify the Division of the terms of resolution.

SETTLEMENT AGREEMENT

The United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement ("OSM") and Pittston Coal Company, its successor entities, subsidiaries, and its affiliates (hereinafter referred to as "Pittston") have agreed to resolve the disputes described below. The parties therefore enter into the following stipulations and agreements. Except as expressly provided in this Settlement Agreement, the representations and undertakings set forth below pertain and apply only to Pittston and OSM.

1. Pursuant to Section 510(c) of the Surface Mining Control and Reclamation Act of 1977, as amended, ("SMCRA" or "the Act"), 30 U.S.C. § 1260(c), and pursuant to 30 C.F.R. § 773.5, *et seq.*, no permit to mine coal shall be issued to an applicant if the applicant, or a party in certain ownership or control relationships with the applicant, has outstanding violations of the Act. In addition, pursuant to 30 C.F.R. §§ 773.20 and 773.21, existing permits may be subject to rescission if unabated violations existed at the time the permit was issued.

2. Pittston has been affected by 30 C.F.R. § 773.5 due to its alleged status as the owner or controller of a number of business entities,

although Pittston has claimed those entities are independent contractors and has denied any ownership or control of those entities. Pittston and OSM are entering into this Settlement Agreement as a means of resolving the dispute between them regarding the propriety of Pittston being listed as a presumed owner/controller of purported contract miners on OSM's Applicant/Violator System through § 773.5, and as a means of resolving the lawsuit instituted by Pittston and a subsidiary, Clinchfield Coal Co., in the United States District Court for the Western District of Virginia, which was recently transferred to the district court for the District of Columbia. OSM was enjoined from permit blocking Pittston or its affiliates through the AVS as a result of that federal lawsuit. Upon the execution of this Agreement, as part of the consideration for this Agreement, the parties will submit a joint motion and an agreed order dismissing that lawsuit styled Pittston Coal Company v. Babbitt, No. 96-1431, (Dist. Ct. D.C.). The parties will also contemporaneously move the Hearings Division of the Office of Hearings and Appeals to dismiss the pending applications for review, styled Holston Mining, Inc. v. OSM, No. NX 93-34-R; and Eastern Coal Corp. v. OSMBE, involving two Pittston subsidiaries and an entity (Glory Coal Company) on the attached list of

contractors. The dismissal of the lawsuit and the applications for review shall be with prejudice as to all contractor violations being settled by this Agreement, but without prejudice as to all contractor violations outside this Agreement. Furthermore, Pittston hereby waives its right to file constitutional challenges to the AVS and the ownership and control regulations, 30 C.F.R, §§ 773.5 and 773.15, as to all contractors on *Exhibit A* and all contractor violations on *Exhibits B - G* being settled by this Agreement, but Pittston reserves its rights as to all contractors and contractor violations outside this Agreement.

3. Pittston and OSM have researched their records and have exchanged information as to Pittston's contract miners. In order to resolve the dispute between them, Pittston hereby agrees that, as to the entities at the sites listed on *Exhibit A*, the factors exist which give rise to the presumption of ownership and control as defined at 30 C.F.R. § 773.5. Pittston also agrees that those presumptions may be applied to the entities identified on *Exhibit A* on a permit specific basis. *Exhibit A* includes, to the extent available, the contractor name, AVS Entity Identification Number, Mine Safety and Health Administration Identification Number, and permit numbers. Upon execution of this

Agreement, OSM shall enter the permit specific relationships on *Exhibit A* into the AVS. Pittston agrees that in any future proceeding with OSM it will not contest that the contractors at the sites listed on *Exhibit A* fall within the presumption defined at 30 C.F.R. § 773.5. Further, Pittston agrees to waive its right to attempt to rebut the presumption defined at 30 C.F.R. § 773.5 as to those entities at the sites listed on *Exhibit A*. As to all violations listed on *Exhibits B - G*, Pittston hereby specifically waives its right to contest its link to those violations. Pittston specifically reserves the right in regard to violations discovered in the future at the sites listed on *Exhibit A* to contest its responsibility for such violations but shall not attempt to rebut its ownership and control of the contractor at the site. Pittston's right to contest responsibility for violations shall include the right to contest ownership or control of the site at the time of the violation. OSM does not admit the relevancy of this defense in all cases.

4. It is the intent of the parties to include in this Agreement all contractors and their applicable violations which are currently identified on *Exhibits A - G*. Additionally, violations on sites listed on *Exhibit A* which are discovered in the future, or violations which occur in the future

due to past mining activities are included in this Agreement except as provided in Paragraph 3 above. For purposes of this Agreement, the term "violations" includes federal notices of violations, federal cessation orders, bond forfeitures, unpaid federal civil penalties, unpaid AML fees, interest or administrative expenses or late payment penalties which accrue on unpaid AML fees and unpaid federal civil penalties, unabated violations, and other obligations arising under SMCRA. Entities, sites, and violations are to be added to or deleted from this Agreement as described below.

a. The parties acknowledge that there may be other sites or entities which should be added to *Exhibit A* and entered into the AVS pursuant to 30 C.F.R. § 773.5 et seq. Such additions to *Exhibit A* may be done through mutual consent of both parties. Any such modifications shall be in writing and signed by both parties and attached and made a part of this Agreement. If an entity or site is added to *Exhibit A*, the parties agree that the related *Exhibits B - G* shall likewise be modified, as appropriate, pursuant to this Agreement.

b. Likewise, the parties acknowledge that there may be some entities or sites which should be deleted from *Exhibit A* and removed from

the AVS. If, following the execution of this Agreement, Pittston can show that it did not own or control an entity or site on *Exhibit A*, such site or entity may be removed from *Exhibit A* through the mutual consent of both parties. However, any deletions of entities or sites listed on *Exhibit A* shall not alter or affect the current reclamation obligations or the current AML fee debt payment provisions under *Exhibits B* and *D - G* of this Agreement. No department, agency, officer or employee of the United States government shall be liable, and Pittston agrees that it will not make any claim, for any refunds of monies paid hereunder, or the cost of reclamation performed under this Agreement, by virtue of any deletions from *Exhibits A- G*, nor by virtue of amendment, deletion or nullification of the regulations implementing the Surface Mining Control and Reclamation Act of 1977, nor by virtue of any amendment, deletion or nullification of Act or any of its state counterparts.^{1/}

5. In making this Agreement, Pittston does not admit any liability for the entities listed on *Exhibit A*, does not assume any contractual

^{1/} Removal of sites, contractors, or violations from *Exhibits A - G* of this Agreement requires OSM's consent. Pursuant to Paragraph 3 of this Agreement, Pittston has waived its right to attempt to rebut links to contractors or contractor violations settled by this Agreement. Accordingly, if OSM and Pittston cannot agree that a contractor or contractor violation should be removed from an exhibit, Pittston has no recourse to administratively challenge OSM's decision through 30 C.F.R. §§ 773.5, 773.15, 43 C.F.R. §§ 4.1280, 4.1380, or any other procedure.

obligation of those entities, and does not waive any defenses it has to liabilities of these contractors, except the SMCRA liabilities under this Agreement. No person or agency other than OSM and the other state surface mining regulatory authorities may assert a claim against Pittston based upon this Agreement or otherwise use this Agreement against Pittston in any manner whatsoever. Similarly, this Agreement does not create any right or obligation enforceable against OSM for the benefit of any person other than Pittston.

6. OSM has reviewed *Exhibit A* and has developed a list of the contractors on whose operations outstanding issues exist concerning abandoned mine land reclamation fees and federal civil penalties, attached as *Exhibits B, C, D* and *G*. *Exhibit B* lists the amount of AML fees attributable to the purported contractors of Pittston. *Exhibit C* shows the amount of federal civil penalty debt. *Exhibit D* shows the amounts of AML fees which have been assessed on purported contractors of Pittston pursuant to fee compliance audits. *Exhibit G* shows the amount of AML fees which have been assessed on certain Pittston subsidiaries through AML fee compliance audits and for which OSM holds Pittston responsible for the entire debt as compromised. To the best of the parties'

knowledge, after reasonable investigation, **Exhibits A - G** list all contractors and contractor violations that are or should be linked to Pittston.

7. In consideration of this Agreement, Pittston agrees to pay all the principal amount of AML debt due from its purported contractors listed on **Exhibits B and D**, with the total AML debt Pittston agrees to pay for its contractors on those two exhibits under the terms of this Settlement Agreement being \$312,817.26. Pittston further expressly agrees to pay \$117,528.87 in AML fees listed in **Exhibit G** plus any such additional penalties and interest which may accrue on **Exhibit G** under the applicable regulations.

8. The total amount of AML fees due from Pittston under this Agreement is \$430,346.13 plus the additional penalties and interest which have accrued and will accrue on the fees listed on **Exhibit G**. Fifty percent of the AML contractor debt, \$156,408.63, shall be paid simultaneously with the execution of this Agreement, with the balance due and payable one year from the date of execution of this Agreement. Interest at the rate of 5.89 per cent per annum shall accrue on the unpaid balance from the date of execution to the date of payment. Interest shall

be compounded annually.^{2/} Additionally, the AML debt attributable to the subsidiaries listed in *Exhibit G*, amounting to \$117,528.87, shall be paid in full upon execution of this Agreement.

9. The parties recognize, understand and agree that OSM has computed abandoned mine land reclamation fees due from Pittston, its affiliates and the contractors shown on *Exhibits B, D, and G* based upon clean coal production tonnages when, under OSM's regulations, the fees could have been computed on the basis of raw coal production. The parties recognize, however, that OSM's regulations on computing AML fees on clean coal or raw coal production are undergoing review. As stated in the audit reports routinely issued by OSM, neither interest nor penalties will accrue on the principal amounts attributable to raw coal tonnages until this regulatory review is completed. Upon completion of the review, Pittston will be notified if OSM elects to initiate future collection actions for the difference between raw coal assessments and the clean coal reported. In the event that payment of fees on raw coal

^{2/} The interest rate is equal to the rate charged on judgments entered in federal courts in favor of the United States. The interest rate for this Settlement Agreement was determined by the parties by calling the United States District Court for the Western District of Virginia. If Pittston pays 50% of the AML fees due hereunder on the date of execution, and the remaining 50% exactly one year later, \$_____ will accrue in interest on the unpaid balance, making the amount due to OSM on _____, 1997, be \$_____ exclusive of any additional sums due for raw coal tonnages.

tonnages is sought, a bill for the additional unpaid fees will be issued by OSM. Additional interest and penalties on such raw coal tonnages will also accrue from the billing date. If presented with a bill for additional fees as a result of a raw coal computation, Pittston shall have the right to contest any AML fee assessment in excess of the clean coal computation and OSM shall have the right to pursue collection of the additional assessment, as in the case of other operators.

10. Based upon the unique circumstances now existing between the parties and in consideration of this Agreement, OSM agrees that Pittston will not be linked to any interest, late payment penalties or administrative costs attributable to the contractors listed on *Exhibits B* and *D* as long as Pittston timely pays all sums due hereunder. Upon execution of this Agreement and the promise to pay the sums described in Paragraphs 7 and 8, Pittston will be considered by OSM to be in the process of correcting the AML deficiency "to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation," pursuant to § 510(c) of SMCRA, 30 U.S.C. § 1260(c). Accordingly, OSM will cause such information to be entered into the AVS as to prevent Pittston from being permit blocked on the basis of the

unpaid AML fees attributable to the contractors on *Exhibits B* and *D*, and the other linked entities on *Exhibit G*. Further, as long as Pittston timely pays all sums due hereunder, Pittston shall have no further liability for interest, penalties and administrative costs on AML fees of contractors and sites listed on *Exhibit A*.

11. Payments required to be made under this Agreement shall be deemed to be made upon receipt of the proper amount by certified check, cashier's check, or money order payable to the "Office of Surface Mining," mailed to:

Office of the Field Solicitor
U.S. Department of the Interior
530 S. Gay Street, Room 308
Knoxville, Tennessee 37902
Attn: John Austin

12. OSM has reviewed *Exhibit A* and has developed a list of sites (*Exhibits E* and *F*) upon which additional reclamation measures need to be taken in order to bring those sites into compliance with the provisions of SMCRA. Under the terms of this Settlement, Pittston will abate any and all outstanding performance standard violations to bring such sites into compliance with the Act.

13. Additionally, Pittston shall participate in OSM's Appalachian Clean Streams Initiative by addressing acid mine drainage at a Virginia site(s) eligible for funding under Title IV of SMCRA. The total cost of Pittston's participation in the Appalachian Clean Streams Initiative shall be \$100,000.00, exclusive of ~~Pittston's~~ planning and engineering ~~costs~~. While Pittston agrees to participate in the Appalachian Clean Streams Initiative, it does not guarantee the results of its work, only the dollar amount of its participation. OSM and Pittston agree to meet with the Commonwealth of Virginia, after the signing of this Agreement, to discuss the Appalachian Clean Streams Initiative and to mutually agree with the Commonwealth of Virginia upon a site, reclamation plans, and cost estimates. OSM shall receive appropriate documentation showing the cost of Pittston's participation in the Appalachian Clean Streams Initiative. Pittston agrees to perform the stream reclamation project in a workmanlike manner.

14. All reclamation performed by Pittston under this Settlement Agreement, except for the work performed under the Appalachian Clean Streams Initiative, shall be in accordance with applicable federal interim or approved permanent program standards. OSM shall conduct follow-up

inspections on all sites on *Exhibits E and F* to determine compliance with items such as, but not limited to, revegetation, sediment pond removal, tree plantings and to determine site conditions after Pittston's initial remedial actions. OSM shall notify Pittston of its findings and any additional work OSM believes is required under this Agreement.

a. If environmental deficiencies are created by the abatement of the performance standard violations included in this Agreement, OSM shall notify Pittston of the deficiencies and Pittston shall take steps to remedy the situation within a reasonable timeframe specified by OSM.

b. In regard to any permanent program site covered by this Agreement, after achievement of the permanent program standards, Pittston may request that the appropriate state regulatory authority terminate jurisdiction pursuant to the provisions of its approved permanent regulatory program.

c. Upon receipt of written requests from Pittston regarding completion of reclamation on interim program sites, OSM and/or the state regulatory authority may notify Pittston of its determination as to whether or not the interim regulatory program provisions have been met as to each interim site covered by this Agreement. Receipt of these notices by

minimize the effect and duration of such disputes, the following procedures shall be utilized in such instances:

a. OSM and Pittston will first make a good faith attempt to resolve any dispute between themselves on the local level. If informal methods fail to produce an agreement, Pittston shall state its position briefly in writing and deliver it to the appropriate OSM Regional Director with a copy to the appropriate Field Office Director. The parties shall then have two weeks within which to negotiate a resolution of the dispute. If an agreement is reached, the parties will sign a brief written statement to that effect, and the statement will be attached to and become a part of this Agreement. If the parties fail to agree, OSM shall provide to Pittston a written decision, explaining the basis for its disagreement with Pittston's position.

b. Upon receipt of a written decision from OSM rejecting Pittston's position on some or all of the issues in dispute, Pittston will have five (5) working days within which it may accept OSM's decision and initiate action to comply with the decision.

c. If Pittston does not accept OSM's written decision within five (5) working days, OSM may initiate any appropriate enforcement action for that site including the issuance of ten day notices, notices of violations, cessation orders or suit in the appropriate U.S. District Court. Moreover, any monetary penalties assessed by OSM after taking an appropriate enforcement action issued as a result of a disagreement about reclamation governed by this Agreement, shall not be included in this Agreement or attached to this Agreement. Pending resolution of the dispute under the procedures set forth above, the parties shall continue to comply with the terms of this Agreement with respect to all matters not in dispute.

d. The parties agree that there are no new administrative remedies or rights of discretionary review under 43 C.F.R. § 4.1280, 43 C.F.R. § 4.1380, or 30 C.F.R. § 773.5 *et seq* created by this Agreement.

If OSM determines that Pittston has a pattern of failing to comply in good faith with the reclamation obligations specified in this Agreement, or fails to timely pay any installment of the AML debt due hereunder, OSM may use either of these failures as grounds for declaring breach of this Agreement. If such failure(s) occurs, OSM may take advantage of any and all remedies available to it under law necessary to secure complete compliance with SMCRA.

17. OSM recognizes that Pittston has performed an estimated \$300,000.00 in reclamation on the Glory Coal Co., Inc., sites in West Virginia, pursuant to agreement with the West Virginia Division of Environmental Protection, and has entered into an agreement with the West Virginia Division of Environmental Protection to reclaim sites formerly permitted by ZY Coal Co., Inc. and Careers, Inc., at an estimated cost of \$1,535,000.00. Moreover, Pittston has entered into a settlement agreement with the State of West Virginia which requires Pittston to perform remedial reclamation measures on Glory's Dola Mines. In addition, as part of the consideration for the acceptance of this

Agreement, Pittston has reclaimed, at no cost to the surface mining regulatory authority for the Commonwealth of Virginia, thirteen bond forfeiture sites at an estimated cost of \$567,000.00; has reclaimed two other sites with pending state enforcement actions with an estimated value of \$600,000.00; and has executed an agreement with the Commonwealth of Virginia to resolve state violations, including bond forfeitures, state civil penalties, bond pool expenditures and other expenditures by the Commonwealth of Virginia pertaining to bond forfeiture sites. OSM further recognizes that the additional remedial reclamation measures Pittston will undertake under its Settlement Agreement with OSM will have an estimated cost of \$1.1 million. In addition to the consideration for this Agreement mentioned above and at paragraph 10, the parties agree that the performance of the remedial reclamation measures set forth in this Agreement and Pittston's participation in Appalachian Clean Streams Initiative shall be consideration. Upon the full performance by Pittston of the terms of this Agreement, OSM shall compromise and offset the federal civil penalty debt in *Exhibit C*. Upon the execution of this Agreement and upon the timely payment of the sums due hereunder, OSM agrees not to permit

block Pittston on the basis of federal civil penalties attributable to the purported contractors on *Exhibit C*. Accordingly, unless Pittston fails to perform as agreed in this Settlement Agreement, no federal civil penalty and no interest, penalties, administrative cost or post-judgment interest arising from those federal civil penalties listed on *Exhibit C* shall be the basis of a permit block for Pittston, its owners or controllers, or any entity owned or controlled by Pittston. Further, in consideration and recognition of the reclamation measures ~~to be performed~~ under this Agreement and the agreements with the state regulatory authorities, and the participation in the Appalachian Clean Streams Initiative, Pittston shall have no further liability for federal civil penalties for contractors and sites listed on *Exhibit A*, ~~as long as Pittston timely pays all sums due hereunder~~

18. As to the Glory site known as Flag Run, special circumstances exist which the parties hereby acknowledge. There ~~has been acidic water~~ discharging through the Flag Run portals. However, Flag Run has been over-permitted by an entity which has, to the best of the parties' knowledge, information and belief, no known ownership and control relationship to Pittston, as the term ownership and control is defined at 30 C.F.R. § 773.5. It appears to OSM that the mountain-top removal

currently being conducted at the Flag Run site is likely to abate the acid mine drainage from the Glory portals. If, at some future date, OSM determines that the acid-mine drainage problem on the Flag Run site is attributable to Pittston, OSM shall be free to address that problem through any provision available to OSM by statute, regulation or applicable case law.

19. In consideration of the execution of this Agreement and Pittston's continued compliance with such, Pittston will be considered by OSM to be in the process of correcting the unabated federal citations "to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation," pursuant to § 510(c) of SMCRA, 30 U.S.C. § 1260(c). OSM will cause such information to be entered into the AVS so as to prevent Pittston from being permit blocked on the basis of the violations identified in the Agreement.

a. Subsequent to the execution of this Agreement, any permits or any significant permit revisions to be issued to Pittston, or to any person or entity related by ownership or control to Pittston, however, shall be conditional on Pittston's compliance with the terms of this Agreement regarding payments of AML fees, performance of reclamation

and completion of the agreed upon participation in the Appalachian Clean Streams Initiative.

b. Although OSM has agreed that, upon full performance by Pittston of the terms of this Agreement, OSM will not block Pittston for the federal civil penalty debts of these purported contractors, and will not require Pittston to pay interest and penalties on the AML fees attributable to the purported contractors, OSM specifically reserves the right to pursue the contractors for the AML fees and federal civil penalties which are not paid by Pittston. The individual contractors shall continue to be linked on the AVS to the unpaid AML fees and federal civil penalties, and shall remain liable for those debts according to law.

20. Pittston will use its best efforts to gain access to all of the mine sites included on *Exhibits E* and *F*. At present, Pittston and OSM expect that the surface owners will allow access to perform the remedial reclamation measures necessary to abate apparent SMCRA violations. If Pittston's best efforts fail, OSM will assist Pittston in gaining site access. In the event that OSM and Pittston fail in their efforts to gain site access, OSM and Pittston will search for an eligible abandoned mine land site under section 404 of SMCRA which requires the same approximate dollar

amount of remedial reclamation measures, and Pittston will reclaim that alternate site in lieu of reclamation of the site for which access has been denied. If forced by circumstances beyond its control to reclaim an alternate site instead of a site listed on *Exhibits E and F*, Pittston will be considered by OSM to have resolved the problem specified on *Exhibits E and F* "to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation," pursuant to § 510(c) of SMCRA, 30 U.S.C. § 1260(c).

21. Any reclamation required under this Agreement may be performed under or as a part of a plan to mine or re-mine the property where the work is to be performed, but Pittston shall obtain all necessary permits before it conducts any such mining operations.

22. Pittston and any person or entity related by ownership or control to Pittston shall, as required by law or regulation, include the permits and purported contractors on *Exhibit A* on any state or federal surface mining permit applied for in the future, or now pending before a permitting authority.

23. The failure of OSM at any time to demand performance of any requirement herein shall not affect OSM's right to compel full

performance of such requirement at any later time. The waiver of OSM of any breach shall not constitute a waiver of any subsequent breach, and the exercise or non-exercise of any remedy by OSM shall not bar the exercise of any other remedy or remedies that may be available to OSM.

24. The parties agree that this writing constitutes their entire agreement. No alterations or amendments may be made to this Agreement unless in writing and signed by both parties.

25. If at any time this Settlement Agreement is reviewed and/or interpreted by an administrative forum or a state or federal court, the parties agree that the purpose of this Agreement is to effectuate the full and fair implementation of SMCRA. The parties do not intend to circumvent any provision of the Act through this Agreement. Accordingly, OSM and Pittston specifically covenant that this Agreement may not be interpreted in a manner that is inconsistent with the provisions of SMCRA or the regulations implementing that statute.

26. This Agreement is conditioned on receipt of approval from the United States Department of Justice, and will not be executed by OSM unless such approval has first been obtained.

07/19/96 12:00 2310000100
Jul-19-96 07:35A
U.S. ATTY GEN'S OFFICE

PITTSBURGH

P-92

IN WITNESS OF THE ABOVE, the parties have executed this Agreement as of the dates set forth below.

PITTSBURGH COAL COMPANY

7-19-96
Date

By: [Signature]
Its President

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

7/19/96
Date

By: [Signature]
Its

CERTIFICATION OF APPROVAL

I certify that I received approval from the Department of Justice on the _____ day of _____ 1996, to allow my client agency, the Office of Surface Mining, to enter into this Settlement Agreement. Executed this the _____ day of _____ 1996, in my capacity as Special Assistant U.S. Attorney in The Pittston Company v. Babbitt, No. 92-1606 (4th Cir.), No. 91-0006-A (W.D. Va.), and as counsel for OSM in Holston Mining, Inc. v. OSM, No. NX 93-34-R, and Eastern Coal Corp. v. OSMRE.

Counsel for OSM and Special Assistant U.S. Attorney

OPTIONAL FORM NO. 10 (7-82)

FAX TRANSMITTAL

To: <u>Dasha Andrus-C. Sh...</u>	From: <u>C. Ward...</u>
Address: <u>502-Knoxville</u>	Phone: _____
Fax: <u>523-545-4316</u>	Fax: _____

FORM 101 CENTRAL SERVICES ADMINISTRATION